

Wednesday  
September 14, 1988



# Federal Register

**Briefings on How To Use the Federal Register—**  
For information on briefings in Chicago, IL, see  
announcement on the inside cover of this issue.





**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for \$340.00 per year, or \$170.00 for 6 months in paper form, or \$188.00 per year, or \$94.00 for 6 months in microfiche form, payable in advance. The charge for individual copies is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 53 FR 12345.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

#### Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

### FEDERAL AGENCIES

#### Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### CHICAGO, IL

**WHEN:** September 19; at 9:15 a.m.

**WHERE:** Room 3320,  
Federal Building,  
230 S. Dearborn St.,  
Chicago, IL

**RESERVATIONS:** Call the Federal Information Center,  
Chicago 312-353-5692



# Contents

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

## Agency for International Development

### NOTICES

Agency information collection activities under OMB review, 35567

## Agriculture Department

*See also* Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service

### NOTICES

Agency information collection activities under OMB review, 35537

### Meetings:

National Plant Genetic Resources Board, 35537

## Animal and Plant Health Inspection Service

### RULES

Overtime services relating to imports and exports:

Commuted traveltime allowances, 35426

Plant-related quarantine, domestic:

Varroa mite (honeybee parasite), 35425

## Architectural and Transportation Barriers Compliance Board

### RULES

Accessible design; minimum guidelines and requirements, 35507

## Army Department

*See* Engineers Corps

## Bonneville Power Administration

### NOTICES

Environmental statements; availability, etc.:

DC Terminal Expansion Project, CA and OR, 35542

Eugene/Springfield, OR, 35542

## Civil Rights Commission

### NOTICES

Meetings; State advisory committees:

West Virginia, 35538

## Commerce Department

*See* International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

## Commodity Futures Trading Commission

### NOTICES

Contract market proposals:

Chicago Board of Trade, etc.—

Stock index futures and options, 35539

## Defense Department

*See also* Engineers Corps

### RULES

Acquisition regulations:

Progress payment rates, 35511

### NOTICES

### Meetings:

Electron Devices Advisory Group, 35540

## Economic Regulatory Administration

### NOTICES

Powerplant and industrial fuel use; new electric power plant coal capability; compliance certifications: Indeck Energy Services of Oswego, Inc., et al., 35544

## Employment and Training Administration

### NOTICES

Adjustment assistance:

APV Chemical Machinery Inc. et al., 35568

Universal Food, Inc., et al., 35569

## Energy Department

*See also* Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission

### NOTICES

Grant and cooperative agreement awards:

Rochester Institute of Technology, 35541

### Meetings:

National Coal Council, 35543

National Petroleum Council, 35543

## Engineers Corps

### NOTICES

Environmental statements; availability, etc.:

Fort Toulouse National Historic Landmark and Taskigi

Indian Mound, Elmore County, AL, 35541

## Environmental Protection Agency

### PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

California, 35528

Indiana, 35527

### NOTICES

### Meetings:

State-FIFRA Issues Research and Evaluation Group, 35549

Pesticides; emergency exemptions, etc.:

Anilazine, etc., 35550

Pesticides; experimental use permits, etc.:

BASF Corp. et al., 35549

Pesticides; temporary tolerances:

Biphenanthrin, 35551

E.I. du Pont de Nemours & Co., Inc., 35552

(2 documents)

Tefluthrin, 35553

Triclopyr, 35554

(2 documents)

Toxic and hazardous substances control:

Premanufacture exemption applications, 35556

Premanufacture notices receipts, 35555

## Executive Office of the President

*See* Presidential Documents

## Export Administration

*See* International Trade Administration



**Farm Credit Administration****RULES**

## Farm credit system:

- Funding and fiscal affairs, loan policies and operations, and funding operations—
- Borrower rights, etc., 35427

**Farmers Home Administration****RULES**

## Program regulations:

- Agricultural Credit Act; implementation, 35638

**Federal Emergency Management Agency****NOTICES**

Agency information collection activities under OMB review, 35557

Committees; establishment, renewal, termination, etc.:

- Advisory Board, 35557

**Federal Energy Regulatory Commission****NOTICES**

Electric rate, small power production, and interlocking directorate filings, etc.:

- Encogen One Partners Ltd. et al., 35544

Emergency action plan guidelines; availability, 35545

Natural gas certificate filings:

- Northern Natural Gas Co. et al., 35546

*Applications, hearings, determinations, etc.:*

- Alabama-Tennessee Natural Gas Co., 35547

- ANR Pipeline Co., 35548

- CNG Transmission Corp., 35548

- Colorado Interstate Gas Co., 35548

- Natural Gas Pipeline Co. of America, 35548

**Federal Home Loan Bank Board****NOTICES**

Agency information collection activities under OMB review, 35558

Federal Savings and Loan Insurance Corporation:

- Parent thrift associations; powers of receiver and conduct of receivership; finance subsidiaries, preferred stock, 35558

Receiver appointments:

- American Savings & Loan Association, 35559

**Federal Maritime Commission****NOTICES**

Agreements filed, etc., 35559

Casualty and nonperformance certificates:

- Special Expeditions, Inc., 35560

- Special Expeditions, Inc., et al., 35560

**Federal Reserve System****NOTICES**

Meetings; Sunshine Act, 35579

*Applications, hearings, determinations, etc.:*

- Fleet/Norstar Financial Group, Inc., 35560

- Peoples Bancorp, Inc., et al., 35561

- Wisdom Holding Corp., 35561

**Fish and Wildlife Service****PROPOSED RULES**

Endangered Species Convention:

- Appendixes; amendments, 35530

**Food and Drug Administration****RULES**

Medical devices:

- Ophthalmic devices—

- Premarket notification exemptions, 35602

**NOTICES**

Animal drugs, feeds, and related products:

- Animal drugs that may be human carcinogens; labeling, 35562

Committees; establishment, renewal, termination, etc.:

- Therapeutic Inequivalence Action Coordinating Committee, 35562

Human drugs:

- Export applications—

- Minipress XL Tablets (prazosin hydrochloride), 35563

**Forest Service****PROPOSED RULES**

Prohibitions:

- Forest development trials, 35526

**NOTICES**

Environmental statements; availability, etc.:

- Custer National Forest, MT, 35537

**Health and Human Services Department**

See Food and Drug Administration; Social Security Administration

**Interior Department**

See Fish and Wildlife Service; Land Management Bureau;

Minerals Management Service; Surface Mining

Reclamation and Enforcement Office

**Internal Revenue Service****RULES**

Income taxes:

- Transition rules; qualified business units using profit and loss accounting method

- Correction, 35467

Income taxes, etc.:

- Foreign tax credit rules and other international tax provisions, etc., 35467

**PROPOSED RULES**

Income taxes, etc.:

- Foreign tax credit rules and other international tax provisions, etc.; cross reference, 35525

**International Development Cooperation Agency**

See Agency for International Development

**International Trade Administration****RULES**

Export licensing:

- Commodity control list—

- Amendments, 35466

- Bromine chemicals and analytical instruments, 35459

**Justice Department**

See also Prisons Bureau

**NOTICES**

Pollution control; consent judgements:

- Ribco Industries, Inc., 35568

Settlement agreements:

- Allis-Chalmers Corp., 35567

**Labor Department**

See Employment and Training Administration; Occupational Safety and Health Administration



**Land Management Bureau****NOTICES****Meetings:**

Cedar City District Grazing Advisory Board, 35565

National Public Lands Advisory Council, 35564

Susanville District Advisory Council, 35565

**Withdrawal and reservation of lands:**

Wyoming, 35564

**Maritime Administration****NOTICES***Applications, hearings, determinations, etc.:*

Baltica Insurance Co. et al., 35577

Sirius Insurance Co., Ltd., et al., 35577

**Minerals Management Service****NOTICES****Outer Continental Shelf operations:**

Beaufort Sea—

Lease sale, 35632

**National Oceanic and Atmospheric Administration****RULES****Fishery conservation and management:**

Ocean salmon off coasts of Washington, Oregon, and California, 35513

**PROPOSED RULES****Fishery conservation and management:**

Northeast multispecies, 35532

**NOTICES****Deep seabed mining; exploration licenses; mine site area revisions:**

Ocean Minerals Co., 35538

**Permits:**

Marine mammals, 35538

**National Technical Information Service****NOTICES**

Inventions, Government-owned; availability for licensing, 35539

**Nuclear Regulatory Commission****NOTICES***Applications, hearings, determinations, etc.:*

Houston Lighting &amp; Power Co., 35570

**Occupational Safety and Health Administration****RULES****Safety and health standards, etc.:**

Asbestos, tremolite anthophyllite, and actinolite, 35610

**Presidential Documents****ADMINISTRATIVE ORDERS***Special observances:*

P.O.W./M.I.A. Recognition Day, National (Proc. 5858), 35423

**Prisons Bureau****NOTICES****Environmental statements; availability, etc.:**

Greenville, Bond County, IL, 35568

**Public Health Service***See Food and Drug Administration***Railroad Retirement Board****PROPOSED RULES****Railroad Retirement Act:**

Employment relation, 35515

**Securities and Exchange Commission****NOTICES****Self-regulatory organizations; proposed rule changes:**

American Stock Exchange, Inc., 35571

*Applications, hearings, determinations, etc.:*

Charter National Life Insurance Co. et al., 35573

PaineWeber America Fund et al., 35574

Public utility holding company filings, 35575

**Small Business Administration****RULES****Business loan policy:**

Small business concerns; loan limits, 35459

State and local development companies; loan limits, 35458

**NOTICES****Meetings:**

National Advisory Council, 35576

**Meetings; regional advisory councils:**

Wyoming, 35577

**Social Security Administration****PROPOSED RULES****Social security benefits and supplemental security income:**

Disability claims; evaluation of symptoms, including pain, 35516

**State Department****NOTICES****Meetings:**

Private International Law Advisory Committee, 35577

**Surface Mining Reclamation and Enforcement Office****NOTICES****Surface coal mining operations; unsuitable lands; petitions, designations, etc.:**

Washington, 35565

**Transportation Department***See Maritime Administration***Treasury Department***See Internal Revenue Service***United States Information Agency****NOTICES****Art objects, importation for exhibition:**

Sign and a Witness: 2000 Years of Hebrew Books and Illuminated Manuscripts, 35578

**Grants; availability, etc.:**

University affiliations program; correction, 35578

**Separate Parts in This Issue****Part II**

Department of Health and Human Services, Food and Drug Administration, 35602

**Part III**

Department of Labor, Occupational Safety and Health Administration, 35610

**Part IV**

Department of the Interior, Minerals Management Service, 35632



**Part V**

Department of Agriculture, Farmers Home Administration,  
35638

**Reader Aids**

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.



**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR****Proclamations:**

5858..... 35423

**7 CFR**

301..... 35425

354..... 35426

1809..... 35638

1902..... 35638

1910..... 35638

1924..... 35638

1941..... 35638

1943..... 35638

1944..... 35638

1945..... 35638

1951..... 35638

1955..... 35638

1962..... 35638

1965..... 35638

**12 CFR**

614..... 35427

615..... 35427

618..... 35427

**13 CFR**

108..... 35458

120..... 35459

122..... 35459

**15 CFR**

379..... 35459

399 (2 documents)..... 35459,

35466

**20 CFR****Proposed Rules:**

204..... 35515

404..... 35516

416..... 35516

**21 CFR**

886..... 35602

**26 CFR**

1 (2 documents)..... 35467

501..... 35467

504..... 35467

505..... 35467

506..... 35467

507..... 35467

511..... 35467

512..... 35467

518..... 35467

519..... 35467

602..... 35467

**Proposed Rules:**

1..... 35525

501..... 35525

504..... 35525

505..... 35525

506..... 35525

507..... 35525

511..... 35525

512..... 35525

518..... 35525

519..... 35525

602..... 35525

**29 CFR**

1910..... 35610

1926..... 35610

**36 CFR**

1190..... 35507

**Proposed Rules:**

261..... 35526

**40 CFR****Proposed Rules:**

52 (2 documents)..... 35527,

35528

**48 CFR**

232..... 35511

252..... 35511

**50 CFR**

661..... 35513

**Proposed Rules:**

23..... 35530

651..... 35532



OUR PARTS AFFECTED IN THIS CASE

A summary of the case history and the results of the examination of the patient, with a view to the determination of the parts affected in this case.

Symptoms	Examination	Diagnosis
1. Headache	Tender over the frontal sinuses	Frontal sinusitis
2. Nasal discharge	Purulent discharge from the right nostril	Nasal polyp
3. Loss of vision	Blurred vision, especially on the right side	Optic neuritis
4. Pain in the eye	Pain on movement of the right eye	Iritis
5. Swelling of the face	Swelling of the right side of the face	Cellulitis
6. Fever	Temperature 101.5° F.	Infection
7. Loss of appetite	No food taken for 3 days	Toxic reaction
8. Weakness	Unable to walk without assistance	General debility
9. Irritability	Easily annoyed	Nervous system
10. Sleeplessness	Woke up 10 times during the night	Insomnia
11. Constipation	No stool for 4 days	Intestinal obstruction
12. Cough	Dry cough	Bronchitis
13. Shortness of breath	Dyspnea on exertion	Pneumonia
14. Chest pain	Pain in the right chest	Pleurisy
15. Hemoptysis	Spitting up of blood	Tuberculosis
16. Night sweats	Sweats during the night	Infection
17. Weight loss	Lost 15 lbs. in 3 months	Malnutrition
18. Anemia	Pale skin, low hemoglobin	Blood poisoning
19. Enlargement of the spleen	Spleen palpable 10 cm. below the costal margin	Leukemia
20. Enlargement of the liver	Liver palpable 5 cm. below the costal margin	Hepatitis
21. Jaundice	Yellowing of the skin and sclera	Liver disease
22. Urinary abnormalities	Hematuria, proteinuria	Kidney disease
23. Hypertension	Blood pressure 180/120 mm. Hg.	Hypertension
24. Heart failure	Rales in the lungs, edema of the feet	Congestive heart failure
25. Death	Expired 10 days after admission	Septicemia



# Presidential Documents

Title 3—

Proclamation 5858 of September 12, 1988

The President

National P.O.W./M.I.A. Recognition Day, 1988

By the President of the United States of America

## A Proclamation

From America's earliest hours as a free Nation, we have known that the cost of liberty is steep. The bill has been paid in full by the courageous members of our Armed Forces. We owe a great debt to all who have served so faithfully and sacrificed so much for our land. Among their ranks are former prisoners of war and those still missing in action, including men known to be alive after the end of hostilities. We will never forget these gallant Americans, or their brave families, or our obligations to them.

We have a deep moral responsibility in this regard—a duty to make every possible effort to account for and return missing Americans to their homeland and to their loved ones. Until the P.O.W./M.I.A. issue is resolved, this issue stays, and will stay, among our Nation's highest priorities.

Similarly, our country has recognized the prolonged and acute suffering of the families of those who remain missing or unaccounted for. We pledge again our unflagging determination to obtain the fullest possible accounting of those still missing, to repatriate all recoverable American remains, and to relieve the suffering and uncertainty of their families.

We will also continue our intelligence efforts to confirm reports of Americans still held in captivity in Southeast Asia. Each of these reports is investigated thoroughly, and both the Executive branch and the Congress scrutinize them. We have not yet been able to confirm such reports; but, if we do, I have pledged to take decisive action to return our men. We have raised this issue repeatedly in negotiations with governments involved, despite their denials.

Our search for the truth is bound up closely with our heritage as a Nation that respects the inherent dignity and worth of every individual. Our liberty is secure because every life is precious to us; we, therefore, can write no final chapter to the story of those who answered their country's call and did not return. They gave without limit, and we owe them, and their families, no less.

To symbolize our continuing national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans Administration, the Selective Service System headquarters, and the Vietnam Veterans Memorial on September 16, 1988. It will also fly over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

In recognition of the special debt of gratitude all Americans owe to those who sacrificed their freedom in the service of our country and to their courageous families, the Congress, by House Joint Resolution 453, has designated September 16, 1988, as "National POW/MIA Recognition Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, September 16, 1988, as National P.O.W./M.I.A. Recognition Day. I call upon all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have made extraordinary sacrifices on behalf of our country. I also call upon



State and local officials and private organizations to observe this day with every appropriate ceremony and activity.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-21049

Filed 9-12-88; 2:34 pm]

Billing code 3195-01-M



# Rules and Regulations

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 88-129]

#### Revocation of Varroa Mite Quarantine

**AGENCY:** Animal and Plant Health Inspection Service.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that rescinded the federal quarantine of areas in which Varroa mites had been found, and that removed the restrictions on interstate movement of various articles from those areas. The interim rule was necessary because, while ineffective in preventing the interstate spread of Varroa mites, the Varroa mite regulations were causing economic losses within the agricultural sector. In response to widespread concern about the Varroa mite problem, we are considering convening representatives of interested parties, with whom we would participate in a process known as regulatory negotiation.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-438-6365.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 10, 1988, we published in the Federal Register (53 FR 16536-16538, Docket No. 88-082) an interim rule that, effective May 6, 1988, rescinded the Varroa mite regulations established in an interim rule published in the April 11,

1988, issue of the Federal Register (53 FR 11825-11830, Docket No. 87-140).

The Varroa mite, *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honeybees within those hives and reducing their ability to pollinate plants and produce honey. Varroa mites multiply quickly, and a beekeeper may fail to notice that they have infested his or her hives until serious damage has been done. Tests and treatments for Varroa mite-infested honeybees are available, however. Beekeepers with reason to suspect the presence of Varroa mites can avail themselves of those tests and treatments to protect their hives.

The apparent efficacy of those tests and treatments led us to establish federal Varroa mite regulations. However, information received from federal and state officials, beekeepers, growers, and researchers caused us to conclude that the regulatory program effected to contain the interstate spread of Varroa mites was disrupting agricultural operations dependent on the interstate movement of honeybees. We therefore determined that by rescinding the Varroa mite interim rule and working with beekeepers and other affected persons, we would more successfully protect agricultural interests. We determined that corrective action, effective immediately, would prevent the serious economic losses that would occur if, as a result of our regulatory program, honeybees could not be supplied where and when necessary within the United States.

##### Comments

As stated above, the Animal and Plant Health Inspection Service (APHIS) rescinded the Varroa mite regulations only after determining that the federal quarantine and the restrictions upon interstate movement were not working. Our attempt to contain the interstate spread of Varroa mites in the United States had been premature, implemented on the basis of preliminary research reports and of optimistic assumptions about the availability of personnel and the other resources without which federal regulations could not succeed. When the emergency provisions appeared to be causing more problems than they were solving, we withdrew them.

We invited the submission of written comments in response to our emergency action rescinding the Varroa mite regulations. Of the 35 comments postmarked or received during the public comment period that ended on July 11, 1988, one unequivocally supported the action. All others expressed concern over the action of APHIS rescinding the regulations.

After considering the matter further, we have concluded that the facts presented in the interim rule still provide a basis for rescinding the Varroa mite regulations. However, APHIS is considering proposing new regulations concerning this matter. In this connection, we are considering convening representatives of interested parties, using the process known as regulatory negotiation. Such negotiation could result in new Varroa mite regulations by spring 1989.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For the reasons provided in the interim rule, the Varroa mite regulations were rescinded one month after their implementation. When it became apparent that the regulatory program intended to contain the interstate spread of Varroa mite was not working and was causing economic dislocations, we acted to prevent that unintended effect. No statistics are available, but we believe that in responding to the earliest indications that the Varroa mite regulations were not working as intended, our emergency action had no significant effect on a substantial number of small entities.



For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. *et seq.*)

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agricultural), Quarantine, Transportation, Varroa mites.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 53 FR 16536-16538 on May 10, 1988.

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of September 1988.

**James W. Glosser,**  
*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-20890 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-34-M

#### 7 CFR Part 354

[Docket No. 88-136]

#### Commuted Traveltime Periods

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing, and adding, commuted traveltime allowances in New York and Vermont. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain

overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

**EFFECTIVE DATE:** September 14, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Paul Eggert, Director, National Administrative Planning and Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing, and adding, commuted traveltime allowances between certain locations in New York and Vermont. (The amendments are set forth in the rule portion of this document.) That action is necessary to inform the public of the commuted traveltime between these locations.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

#### List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

#### PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).



2. Section 354.2 is amended by removing and adding, in alphabetical order, the information as shown below:

**§ 354.2 Administrative Instructions prescribing commuted traveltime.**

**COMMUTED TRAVELTIME ALLOWANCES**

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Out-side
Remove:			
<b>New York</b>			
Rouses Point (including Champlain).	Rouses Point.	1	
Plattsburgh	Rouses Point.	2	
Ogendsburg	Rouses Point.	5	
Roseton	Rouses Point.	4	
Chateaugay (including Churubusco and Cannon Corners).	Rouses Point.	2	
Massena	Rouses Point.	4	
Add:			
Rouses Point (including Champlain).	Rouses Point.	2	
Plattsburgh	Rouses Point.	3	
Ogendsburg	Rouses Point.	6	
Roseton	Rouses Point.	5	
Chateaugay (including Churubusco and Cannon Corners).	Rouses Point.	3	
Massena	Rouses Point.	5	
<b>Vermont</b>			
St. Albans (including Highgate Springs and Morses Line).	Rouses Point, NY.	2	
Add:			
St. Albans (including Highgate Springs and Morses Line).	Rouses Point, NY.	3	

Done in Washington, DC, this 8th day of September, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20039 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-34-M

**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 614, 615 and 618**

**Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) by action of the Farm Credit Administration Board (Board) adopts and publishes final regulations on borrower rights implementing changes brought about by the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) enacted on January 6, 1988, which amended provisions of the Farm Credit Act of 1971 (the Act). The borrower rights include, among others, procedures for the restructuring of loans from certain Farm Credit System (System) institutions and other "qualified lenders," which have become "distressed loans" as those terms are defined in the Act; protection for certain borrower stock; certain protections for borrowers who have met all loan obligations; cooperation by System institutions with certified State agricultural loan mediation programs; and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions.

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of effective date will be published.

**FOR FURTHER INFORMATION CONTACT:** Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 12, 1988, the FCA published a proposed rule with request for comments (53 FR 16937) to implement the changes in borrower rights that the legislation enacted. In particular, the statute directed System institutions which are "qualified lenders" to develop policies governing the restructuring of "distressed loans", as those terms are defined in the Act, and to submit such policies to FCA. Other revised provisions specify the review available to applicants and/or borrowers who are denied credit or restructuring of their loans, provide protection for borrower stock and voluntary or involuntary advance payment accounts, set forth procedures to be used in informing

borrowers about qualifying for differential interest rate programs, establish certain protections for borrowers who have met all loan obligations, and provide a right of first refusal to certain borrowers to repurchase or lease certain property acquired by System institutions through foreclosure or voluntary conveyance. In addition, System institutions are to cooperate in good faith with requests for information or analysis of information made in the course of mediation under any State agricultural loan mediation program certified by the Secretary of Agriculture in accordance with section 501 of the 1987 Act.

A public hearing was held on June 8, 1988, and the comment period closed on June 13, 1988. The FCA received 303 comments on the proposed regulations, with some individuals or groups submitting more than one comment letter. Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of its 37-member banks. Additional comments were received from System institutions, numerous individuals, groups representing farmers, legal aid organizations or attorneys, members of Congress, four attorneys general from midwestern States, and other groups. All comments submitted have been considered in drafting the final regulations which are published herein. Comments on sections of the Act concerning areas other than borrower rights, or other written material submitted not commenting on the proposed regulations have not been addressed. Except for the general comments addressed directly below, any changes to the proposed regulations including any comments received on the subject matter are explained below by section within the affected part of 12 CFR. Where commenters addressed issues in one section that FCA felt more appropriately should be discussed in another section, FCA responded to those comments in the section(s) that more appropriately dealt with the issue. If a section number is not referenced, no comments were received.

**Response to Comments**

*General Comments*

Many comments were received concerning the direct and indirect costs to the System created by borrower rights. Some System institutions, as well as one individual farmer expressed concern that "good" borrowers or viable farmers are in effect paying for costs incurred on behalf of "bad" or distressed borrowers. There was



concern over the potential for abuse of the provisions because of the costs and delays created by borrower rights, as well as by any overlap these rights may have with bankruptcy and State debtor protection laws. FCA recognizes that there are direct and indirect costs involved and the potential for abuse. However, FCA also recognizes the need for effective implementation of borrower rights. Thus, throughout the regulations, FCA has balanced all of these concerns by implementing the statute as fully and fairly as possible such that all borrowers who are entitled to such rights are protected and afforded their rights without unnecessary costs to the lenders, the System, and all member borrowers.

Comments expressed concern about the perceived inconsistent implementation of borrower rights throughout the System. Specifically, commenters requested FCA require that restructuring policies developed under § 614.4515 be uniform and the content of those policies be dictated by FCA. Also, one comment requested that detailed policies regarding first refusal rights be established. In response to those general comments that FCA should require uniformity in the manner in which all lenders implement borrower rights, to the extent that FCA has adopted final regulations that require qualified lenders to afford borrowers their rights as set out in the statute, there is uniformity. However, FCA sees no need to require each and every qualified lender to carry out each aspect of the borrower rights provisions in the same manner such that FCA is in effect making every day business judgment decisions for the lenders. FCA will not substitute itself for the functions that are to be performed by qualified lenders' management and boards of directors by prescribing every detail of a lender's policies. FCA will, of course, continue to examine the institutions' compliance with these statutory and regulatory criteria.

Farm groups and individuals commented that FCA merely restates the Act in the regulations without providing for more specific guidance. FCA disagrees with this comment in that the borrower rights provisions in the statute offer specific guidelines, and where they do not, the final regulations address these issues. One group commented that FCA merely restates the Act, and thus fails to direct lenders to comply with the statute. However, no such express direction is required, as failure to comply with the statute would be a violation of law. Where the regulations follow the Act, lenders must comply with requirements that are set

out not only in the Act, but in the regulations as well.

One individual recommended that a statement of purpose and responsibility of the System be included in the regulations. One commenter further suggested that the regulations state that the main objectives of the Act are to place the control of the System back into the hands of the family farmers. This individual has apparently misinterpreted the purpose of the borrower rights provisions which is to afford borrowers certain rights as specified in the Act. The "control" of the System need not be addressed in these regulations since borrowers/stockholders already possess the means to "control" the System through the exercise of their voting rights. Since the Act and regulations set forth the borrower rights, and the responsibilities and purpose of System institutions and other qualified lenders concerning the rights, it is not necessary to write a statement of purpose and responsibility in the regulations. (For the policy and objectives concerning the Act itself, see section 1.1 of the Act.)

There were comments from farmers' groups and individuals concerning interaction with the Farmers Home Administration (FmHA) programs. Commenters advocated that System institutions should refrain from taking any action, specifically foreclosure action, until FmHA and FCA regulations are in place. Unless the Act provides otherwise, the new provisions of the statute were effective as of January 6, 1988, and System institutions are required to comply with the requirements of the statute. One comment requested that the regulations instruct the System to use certain procedures of FmHA loan guarantee programs. Section 102 of the 1987 Act states that System institutions should use FmHA loan guarantee programs, as well as other restructuring measures "considering the availability and appropriateness of such programs on a case-by-case basis." Thus, the statute does not require the use of the FmHA programs in every instance, and FCA does not believe that the regulation should.

One comment stated that some borrowers are being informed that they must waive their rights in order to obtain credit. The commenter did not state whether he was referring to the waiver referenced in § 614.4367(b), which is a waiver in connection with the sale of loans in the newly created secondary market. FCA believes that qualified lenders cannot otherwise deny borrowers their statutory rights by

making the waiver of their rights a condition for receiving credit because to do so would render the borrower rights provisions of the statute meaningless. System institutions will be examined to ensure that borrowers are afforded these rights, and FCA may use its supervisory and enforcement powers, where appropriate.

Several comments were received concerning the issue of pending actions or "pipeline loans," i.e., loans upon which foreclosure proceedings may have been initiated, but not completed as of January 6, 1988, the effective date of the legislation. Specifically, comments were received which stated that individuals are entitled to borrower rights if adverse actions and foreclosures were initiated prior to January 6, 1988 or if foreclosures were pending, but not complete prior to January 6, 1988. Some comments suggested that the restructuring provisions in the regulations should be applicable even when the foreclosure process is complete or a lender has received a foreclosure judgment, but the land has not yet been placed into a lender's inventory. A comment was also received from members of Congress stating that the Act intends to extend restructuring rights to *all* borrowers with distressed loans, as long as the foreclosure process is not complete as of the date of enactment of the legislation.

While the issue is not free from doubt, upon a review of the statutory language, the FCA Board has concluded that as long as the foreclosure proceeding as defined in § 4.14A(a)(4) of the Act was not complete as of January 6, 1988, restructuring rights are applicable, if otherwise appropriate. Section 4.14A(b)(3) of the Act and § 614.4519(b) state, "No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring \* \* \*." The borrower rights provisions became effective on January 6, 1988, and as of that date, any borrowers with "distressed loans" (as that term is defined in the statute) are entitled to restructuring rights. These include loans subject to a pending foreclosure proceeding, *not yet* complete as of January 6, 1988. FCA cannot define when a foreclosure proceeding is complete because this is a matter of State law. Comments on "pipeline loans" were received concerning rights of first refusal as well. Similarly, FCA believes that if an institution had "acquired property" as that term is defined in § 614.4522, that had not been sold as of January 6, 1988, the previous



owner should be afforded his first refusal rights.

Comments were received that requested that the regulations ensure that the borrower rights provisions are applicable to borrowers who are in the process of bankruptcy proceedings and some commenters requested that the regulations apply to situations where an individual's debts have already been discharged in bankruptcy. FCA believes that the issue of whether these provisions are applicable in a bankruptcy proceeding is a determination for the courts to make and therefore has not included such a provision in the regulations.

Comments were received from FCCA and one Farm Credit Bank (FCB) concerning applicability of other laws and regulations to the restructuring provisions. These comments recommended that the regulations provide that System institutions need not comply with certain other regulations and laws during the restructuring process. The comment from the System institution suggested that the regulations state that when restructuring distressed loans, lenders need not comply with other FCA lending regulations, specifically §§ 614.4140, 614.4150, 614.4180, 614.4190, and 614.4200. FCCA suggested that certain statutory requirements (sections 1.6, 1.8, 1.9 and 2.4 of the Act)<sup>1</sup> should be applicable only to the origination of new loans, but not to the restructuring of distressed loans. The reason offered for the proposed changes is that there is a statutory mandate which requires restructuring of distressed loans when the criteria in the borrowers rights provisions are met, and this mandate should not be conditioned upon other statutory and regulatory requirements. The commenters further argue that if restructured loans must comply with these other statutory and regulatory requirements, some restructuring proposals must be rejected. For example, there may be an instance where the cost of restructuring is less than the cost of foreclosure, but *only if* a System institution is able to restructure a loan beyond the terms prescribed by the Act and regulations. A comment was also received from members of the Congress recommending that institutions be allowed flexibility to restructure loans by not requiring strict

compliance with other statutory and regulatory provisions.

In the context of restructuring distressed loans, FCA believes that stock and collateral requirements, as well as provisions concerning the term of years of a loan which are otherwise applicable when an institution originates a new loan, should not necessarily be applicable in all restructuring situations. System institutions must exercise their business judgment when considering such requirements in a restructuring context in order to enhance the possibility for ultimate repayment of the loan consistent with the borrower's ability to repay. However, if new funds are advanced, all such requirements are applicable. Regarding § 614.4140, *Sound Loan*, § 614.4150, *Credit Factors*, and eligibility requirements, FCA does not believe that these requirements in any way impede loan restructurings. Institutions are still expected to comply with safe and sound practices, and FCA will continue to examine for such compliance.

Numerous comments concerned alleged lenders' noncompliance with the Act. Groups and individuals posed the question of what recourse or procedures are available for individuals who have not and may not in the future be given their rights. One attorney commented that the regulations should provide that an aggrieved borrower has the right to seek the imposition of civil money penalties. Two individuals suggested that FCA should establish procedures to process complaints regarding borrower rights. Specifically, one of these commenters suggested that formalized appeal procedures be established.

Regarding civil money penalties, it is FCA and not private individuals, that determines whether a civil money penalty is appropriate. See § 5.32 of the Act. FCA will continue through its examination process and related enforcement powers to determine whether institutions are complying with applicable laws and regulations, including borrower rights, and, where appropriate, FCA will seek remedial action, including imposition of civil money penalties. As for establishing procedures, since many of the provisions are new, FCA does not believe that establishing procedures is appropriate or necessary at this time.

Some comments suggested that FCA hold several hearings around the country on the borrower rights provisions to allow many individuals the opportunity to comment on the proposed regulations. A public hearing was held in McLean, Virginia at FCA's

headquarters, and FCA does not believe additional hearings at different locations to be necessary, or cost effective. It would not be an efficient use of time or resources to hold multiple hearings around the country. Furthermore, every individual who wanted to comment was able to do so by submitting written comments. Written comments were not given any less consideration than those presented orally at the hearing. (It should be noted that even those individuals who testified were required to submit written comments covering the scope of their oral testimony.)

Finally, many comments requested that the regulations be revised in such ways that would change the statutory language. In most instances, FCA has closely tracked the statutory language in an attempt to carry out Congressional intent. Some additions were made that do not alter the existing language or Congressional intent, but further explain the statutory requirements. Also, the Act refers to "Districts." This language has been changed or deleted as "Districts" may no longer exist after January 6, 1989 pursuant to section 412 of the 1987 Act. Finally, many commenters referred to the technical amendments bill, H.R. 3980 that has since passed. Thus, any appropriate changes have been made.

#### Comments by Section

##### Part 614—Loan Policies and Operations Subpart K—Disclosure of Loan Information

The disclosure regulations set forth timely and meaningful loan disclosure requirements that must be made by qualified lenders to prospective and current borrowers such that those individuals may make informed decisions.

##### Section 614.4365 Applicability.

One comment suggested the addition of the phrase, "except as to those provisions not covered thereby" to the end of this section, thus making the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* (commonly referred to as Truth in Lending Act (TILA)) applicable. FCA does not agree with this suggestion. Section 4.13 of the Act clearly states that the disclosure requirements apply to all loans not subject to TILA. The regulations accordingly comport with the statute. Another commenter suggested that TILA be used as a model for FCA's disclosure requirements. Where appropriate, FCA used TILA as a guide. For example, the definition of "loan origination charges" is based on similar terms used in the regulations that implement TILA.

<sup>1</sup> These sections cited by FCCA are applicable to Federal Intermediate Credit Banks (FICBs) or Federal Land Banks (FLBs) under the Act before the 1987 revisions. These statutory requirements are now found in §§ 1.7, 1.9 and 1.10 and are applicable to Farm Credit Banks (FCBs), and in the case of § 2.4, to production credit associations (PCAs).



*Section 614.4366 Definitions.*

A few comments suggested that the "effective interest rate" should be the same as the "fixed rate." The rates are not and cannot be the same as is explained by the definitions. The effective rate is an interest rate, either fixed or variable, which takes into consideration the amount of stock purchased, loan origination charges, and other applicable factors, as further defined in § 614.4366(b).

FCCA commented that "as a percentage of the initial net proceeds of the loan" should be deleted since it may no longer be appropriate after the new capitalization bylaws are adopted pursuant to section 4.3A(c)(1) (E) and (H) of the 1987 Act. FCA agrees and the regulation has been changed accordingly.

A few comments stated that the definition of a loan was not clear. Specifically, the following questions were posed: "Is a 'loan' a loan contract renegotiated in restructuring for the purpose of disclosure?"; "When does a loan application become a loan for secondary market pooling purposes?"; and "Is a 'commitment' created at the time of execution of a loan contract, but before closing?"

In general, the definition of a "loan" is provided in section 4.14A(a)(5) of the Act and FCA believes no further clarification is necessary. Regarding the specific comments, FCA addresses these herein. FCA is unable to determine in all restructuring circumstances whether a new loan is created because such cases depend on how the lender actually implements the restructuring. If a "new loan" is created, then the disclosure requirements are applicable. Regarding the secondary market issue, the definition of a "loan" is used in this section for the purpose of determining what disclosures need to be made. Thus, FCA need not address, in these regulations, the legal issue of at what point in time a loan exists since § 614.4367(b) states at what time disclosures must be made regarding loans that will or may be pooled. However, for purposes of the disclosures, the issue of when a "commitment" becomes a loan is not relevant since again the regulations specify when the disclosures must be made. Section 614.4367(a) states that disclosures must be made pursuant to this section "not later than the time of loan closing."

Finally, one commenter stated that the definition of "standard adjustment factors" is vague because he did not know what "typically taken into consideration" means. FCA believes

that the definition is clear. It means those factors (and more than those listed in the definition may exist) ordinarily considered in adjusting the interest rate, according to loan pricing policies established by the individual institution.

*Section 614.4367 Required disclosures—in general.*

A number of comments requested that more information be disclosed. Those comments that requested that specific information be disclosed are discussed below. One comment made the general statement that more information should be disclosed without specifying what information. On the other hand, a few lenders commented that there is a difference between complete disclosure and unnecessary disclosure. FCA agrees and has attempted not to require unnecessary disclosure while simultaneously assuring that borrowers receive complete, timely, and meaningful disclosure of the information that they need in order to make informed credit decisions.

One comment suggested that lenders clearly explain all billings made in connection with a loan. Although FCA agrees that this is good business practice, FCA does not believe that it is appropriate to include this in the disclosure regulations. The statute clearly states what type of information should be disclosed and billings are not included in that information. Another comment suggested that the availability of the loan review process should be publicized. FCA assumes that this commenter was referring to the disclosure requirements of § 614.4368 and this is discussed below in that section. To the extent that the comment might have been referring to the credit review committee process, those disclosures are required under §§ 614.4441 and 614.4518.

One individual suggested that each lender develop a glossary of terms used in normal operations, including disclosures and loan restructurings, and that the glossary be made available to every stockholder. FCA does not believe this is necessary since words and terms are adequately defined not only in Subpart K in § 614.4366, but also in Subparts L and N in §§ 614.4440 and 614.4512. One comment also suggested that a citation to TILA be added as a disclosure requirement. FCA disagrees for the reasons explained in the discussion on TILA in § 614.4365.

*Section 614.4367(a) Disclosures at loan closing.*

FCCA recommended that "protected" be substituted for "guaranteed" in

§ 614.4367(a)(4) and similarly in Model Form No. 1 because although section 4.13(a)(5) of the Act uses the term "guaranteed," that term is not reflective of the true status of eligible borrower stock under section 4.9A of the Act. The comment also pointed out that "guaranteed" is not used anywhere in section 4.9A. Section 4.9A refers to "eligible borrower stock" and FCA has changed the regulation to use this term instead of either "protected" or "guaranteed."

Some comments suggested that FCA should specify in § 614.4367(a)(5) the various types of loan options with explanations of terms which farmers can use to enable them to make decisions. Since individual lenders offer different loan options, some of which may be distinctive to one lender, and since each FCB has its own policies and loan options, FCA does not believe it appropriate to further define "loan options."

One individual commented that he had a "fixed rate loan" and that despite this fact, changes in the rate were made that were not previously disclosed. Pursuant to § 614.4367(a)(2), if a rate is adjustable, the lender must make the requisite disclosures. However, the borrower should be aware of the fact that the effective interest rate on "fixed rate loans" may be subject to change (see § 614.4366(c)), and that disclosure concerning the effective interest rate must be made pursuant to § 614.4367(a)(3).

*Section 614.4367(b) Disclosures for loans that may be pooled.*

FCCA asserted that the requirement in § 614.4367(b)(2) for a borrower to execute a waiver of restructuring rights if his loan will be pooled goes beyond the requirements of the statute. FCCA suggested that no waiver be required, and that alternatively if one is required that it be within 3 days of commitment to coincide with the notification requirement of § 614.4367(b)(4). FCCA's rationale to eliminate the waiver requirement is that it adds to an institution's paperwork and therefore inhibits the System's ability to compete in the secondary market. FCCA further argues that if a waiver is required it should coincide with the 3-day notification requirement of § 614.4367(b)(4) because as the proposed regulation is now written, a borrower may allow his loan to be pooled within 3 days of commitment, but may change his mind at the time of loan closing. Since pooled and non-pooled loans may have different terms, for a lender not to know until closing whether a loan will be



pooled makes it difficult, if not impossible, to have properly prepared loan documents at the time of closing. Furthermore, FCCA asserted that if a lender does not know the status of the loan until closing, it may make it more difficult to plan for and package secondary market loans. Borrowers commented that the waiver requirement should be deleted because borrowers should never have to waive their rights.

FCA disagrees with FCCA and the borrowers that the waiver requirement should be deleted. FCA believes that FCCA and the borrowers who commented on this issue may have misunderstood the purpose of the waiver requirement. The waiver requirement actually operates as a protection for lenders, as well as borrowers. Pursuant to section 8.9 of the Act, if a loan is pooled, restructuring rights do not apply. By requiring a waiver, the borrower must be made fully aware of the fact that restructuring rights are not applicable and the lender and borrower have demonstrated that they clearly understand that these rights are not applicable. For this reason, although FCA understands that a small amount of additional paperwork is created for the lenders, FCA believes that the waiver requirement is necessary so that borrowers and lenders are assured of notification of the consequences of loan pooling. However, FCA agrees with FCCA that the waiver should coincide with the 3-day requirement and the final regulation has been amended to reflect this change.

Some farmer groups suggested that a model form for the waiver should be included in the regulations and used by all lenders for consistency. The requirements of § 614.4367(b)(2) are fairly simple, straightforward and limited in nature such that FCA does not believe that a model form is required. A few comments from borrower groups suggested that prior to signing a waiver, borrowers should be provided with an explanation of all of their rights associated with restructuring. Section 8.9 of the Act provides that the notice shall inform the applicant that if a loan is pooled, sections 4.14, 4.14A, 4.14B, 4.14C, and 4.37 shall not apply. Thus, FCA agrees that the notification must explain that these sections of the statute will not apply. The regulation has been revised accordingly.

**Section 614.4367(c) Changes in interest rates.**

A few comments suggested that the phrase "other than standard adjustment factors" be deleted in § 614.4367(c)(3), thus making the regulation require disclosure of these factors 10 days

before the effective date of an increase. One comment suggested the following specific language: "Such notice shall include the amount of each of the standard adjustment factors and any other factors used to compute the new rate." FCA believes this to be a redundant requirement and accordingly, the proposed language has not been adopted. Section 614.4367(a)(2)(ii) requires disclosure of these factors no later than the time of loan closing. Thus, FCA believes it is unnecessary to require this disclosure again, 10 days before the effective date of an increase.

Some comments suggested that all such "factors" should be listed in the regulation. FCA does not believe such a list is necessary or practical. The regulation requires disclosure of "any" factors, thus it is unnecessary to list all the possible factors. Furthermore, since the factors may be different depending on the lender, situation, and other factors, it would be of little value for FCA to attempt to compile a list.

Many comments were submitted concerning the requirement for notification of a rate increase 10 days before the effective date of the increase. Some borrower groups and individuals suggested that the notification be made 30 days in advance so that individuals have sufficient time to explore other alternatives. FCCA suggests that the notification requirement for increases be the same as for decreases, i.e., no later than the effective date of the increase. FCCA asserts by way of example, that if an interest rate is increased effective on July 1, on a loan with a monthly repayment schedule, the borrower will not have to pay the increased amount until August 1. Although FCCA recognizes that interest is accruing at the new rate for the 30-day period preceding the August 1 payment date, FCCA asserts that the borrower would still be given 30 days within which to seek alternative financing. FCCA further states that presently the proposed regulation gives the borrower 40 days to seek refinancing and that while the 10-day difference is not significant to the borrower, it is to the lender because of the additional burden to the lender. FCCA argues further that the Federal Reserve Board (FRB), which vigilantly oversees consumer lending, is more flexible on this issue than the FCA. Even if FCA does not eliminate the 10-day requirement in general, FCCA argues that FCA ought to waive it if: (1) Lenders make loans tied to an index entirely outside the control of the System, (2) the index is widely publicized and generally accepted throughout the business and agricultural community, and (3)

disclosures clearly referencing a prime rate or other index are made when the loan is originated and closed. FCCA argues that since changes in the prime rate, for example, are largely unpredictable and outside the control of the lender, the proposed regulations as written are not compatible with such pricing methodology and that Congress could not have intended that the disclosure requirements impede such pricing practices as evidenced by the fact that the 10-day requirement is not found in section 4.13 of the Act.

Although timely, meaningful disclosure is required, FCA must also balance the costs to the lenders of disclosure requirements. If the disclosure regulations are so strict that System institutions have difficulty competing with other lenders, then the entire System suffers, including, ultimately, the borrowers. FCA recognizes that the 10-day requirement is an added burden to the lender, but it also recognizes that the 10-day time period is significant to the borrower. The purpose of the disclosure regulations is to inform borrowers of certain information so that they have sufficient time to make informed decisions and exercise options that may be available to them. Furthermore, the comments received by FCA from borrowers requesting 30-day as opposed to 10-day advance notification indicate that the period is of significance to borrowers. FCA is not persuaded by FCCA's reference to the FRB since the System is in some ways unique and cannot be compared to other financial systems. Furthermore, the FRB disclosure requirements that FCCA referred to provide for disclosure of an interest rate increase subsequent to the increase, but only in very limited circumstances. On the other hand, FCA is not persuaded that the suggested 30-day time period advocated by borrowers is practical. This long a period would impose too great a burden on the lenders who are not always able to determine that far in advance when an increase will be necessary and the costs to them in potential lost revenues for that 30-day period may be significant. On balance, FCA believes that the 10-day requirement does not impose too great a burden on the lenders and that it is an adequate amount of time for borrowers to evaluate the effect of the increase and take whatever action they feel is necessary. Comments were also received that suggested that a 30-day requirement be added to § 614.4367(d), as well. For the reasons discussed above, FCA does not agree and the regulation has not been changed. In



response to FCCA's comments advocating that notifications of rate increases tied to indexes such as prime rates be provided at the time of the increase and not 10 days before, FCA believes that the theory behind the 10-day advance notice to allow borrowers to timely explore other options available to them is equally applicable in these instances.

*Section 614.4367(e) Notice requirements.*

Commenters suggested that paragraph (e) of § 614.4367 be changed to require notification to all parties. The reason offered for this recommended change is that all primary obligors are entitled to such disclosures and there may be situations (e.g. during divorce proceedings) where all primary obligors will not have access to the information. Although FCA agrees that all primary obligors should have access to the information, it does not agree that lenders should be responsible for notifying every obligor. Each primary obligor is responsible for ensuring that he is fully informed by other primary obligors. FCA does not think it is appropriate to create unnecessary costs or responsibilities and this further notification would be such a cost and responsibility.

*Appendix to 12 CFR 614.4367—Required disclosure—model disclosure forms.*

It was suggested that the model forms should be patterned after TILA. With some minor changes explained below, FCA believes that the proposed forms are adequate to give lenders an idea of how disclosures may be made. It was also suggested that the forms be more specific and that their use be mandatory. FCA does not believe that the forms need to be more specific since the purpose of the forms is to give lenders an example of the type of form that is appropriate. Furthermore, FCA does not believe that the forms must be mandatory. The use of the model forms is optional as long as lenders make the requisite disclosures.

One lender found a conflict between the language of § 614.4367(a)(3) and the model form. The lender commented that the text of the regulation seems to require disclosures using representative examples rather than loan-by-loan calculations while the model form requires only the latter. The commenter asked for clarification on which FCA was requiring. FCA requires both. Section 4.13(a)(3) of the Act clearly requires the use of at least one representative example when disclosing the effect that loan origination charges or stock or participation certificate

purchases have on the effective interest rate. Thus, the initial disclosure of the effective interest rate should take into account the required purchase of stock or participation certificate and loan origination charges at the time of loan closing, if not before. In addition, at least one further disclosure is required which states what the effective interest rate would be if there were a change in the purchase requirement as it relates to the loan balance. Thus, the model form has been changed to reflect this.

One lender commented that although Model Form No. 2 requires disclosure of the effective interest rate, § 614.4367(c) does not. Although § 614.4367(d) addresses the effective interest rate, FCA recognizes that the lender's comment concerning § 614.4367(c) is appropriate and the final regulation will be changed to reference the effective interest rate, as well. Finally, the model forms have been amended to refer to "qualified lenders" rather than "System institutions."

*Section 614.4368 Disclosure of differential interest rates.*

A farmers group suggested that lenders provide a one-time communication to "non-troubled" borrowers on their rights to a review of their loan. FCA believes that a notification should be provided to borrowers and has revised the regulation to require notification to prospective borrowers not later than the time of loan closing. This notification may be made at the same time as the disclosures required by § 614.4367(a). Regarding current borrowers, lenders should notify them of their rights under this section at the time that they notify them of the next rate change. The same group also suggested that the regulation require that the lender respond to the borrower within 45 days. FCA does not see a substantial benefit to this suggestion, especially since the borrower would have been notified of the interest rate that he would be receiving no later than loan closing.

*Subpart L—Actions on Applications; Review of Credit Decisions*

Subpart L sets forth definitions and the processes to be used in reviews of credit decisions.

*Section 614.4440 Definitions.*

One commenter suggested that a glossary of terms should be developed Systemwide and made available to every borrower. Although such a glossary may be beneficial, FCA believes that the decision to develop such a glossary should be within the lender's discretion.

One farmers group commented that "borrower" should be defined to include a person who holds System collateral, has System debt and/or holds System stock. The borrower rights provisions are applicable to "loans" from "qualified lenders" as these terms are defined by the statute, and the regulations so provide. The definition of a loan is a "loan made to a farmer, rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and other credit need of the borrower \* \* \*." Since the definition of "loan" clearly indicates the individuals covered by the borrower rights provisions, no further definition of borrower is required.

*Section 614.4440(a) Adverse credit decision.*

Farmers groups suggested that "adverse credit decision" should be expanded. Definitions were suggested that would include the following as "adverse credit decisions": A denial of a formal application for reduced interest rates, an increase in interest rates, and the classification of a loan as "nondistressed" and therefore not entitled to be considered for restructuring. The statute clearly defines those decisions that credit review committees should consider. The statute provides for review of the following adverse credit decisions: Denials of credit; approval of credit but in a lesser amount than that applied for; denials of restructuring applications; and denials of requests to return a nonaccrual loan to accrual status, but only for borrowers who were not delinquent at the time of such action and only if an adverse action resulted from the change in status. Thus, the statute does not allow for expansion of the definition of "adverse credit decision" as suggested by the farmers groups. The FCCA suggested that "adverse credit decision" be changed to limit reviews of a denial of a request to return a loan to accrual status to conform to the requirements set out in § 614.4514 and 4.14 D(d)(2) of the Act, i.e., such review would only be available to borrowers who have met all loan obligations and only if placing a loan in nonaccrual status results in an adverse action. The proposed regulation was intended only to provide a review of the denial to return a nonaccrual loan to accrual status for those borrowers who meet all loan obligations when the change in status results in an adverse action. However, as FCCA points out, proposed § 614.4440 could be interpreted to give all borrowers in all instances the right to this review. Therefore, the definition of applicant in the final



regulation has been adjusted accordingly, and § 614.4514 *Borrowers who meet all Loan Obligations* will be clarified to reference § 614.4441 *Notice of Action on Loan Application*, as well as § 614.4443 *Review Process*, making those sections applicable to the review of a denial for a request to return a nonaccrual loan to an accrual status when there is an adverse action. Again, this would clarify that such reviews apply to denials of credit; denials of restructuring applications; and denials of requests to return a nonaccrual loan to accrual status, but only for borrowers who were not delinquent at the time of such action and only if an adverse action resulted from the change in status.

*Section 614.4440(c) Application for restructuring.*

One comment suggested that the regulation require that loan officers provide a written copy of the restructuring policy to the borrower, that a borrower request restructuring in writing, and that a "casual comment" by a System institution not constitute proper notification of restructuring rights. Section 614.4516 requires that a copy of a lender's written policy be provided to the borrower and § 614.4440(c) defines an "application for restructuring" as a *written* request. "Casual comments" by lenders would not comply with the formal written notifications required by the regulations.

Farmers groups and individuals requested more specifics on what type of information is required to be provided in an "application for restructuring." One group suggested that the definition be expanded, as well as clarified to create uniform, consistent procedures. Another comment suggested that the definition needs to emphasize that the lender and borrower should work together, negotiate and put forth a good faith effort.

Most comments were concerned specifically with the "preliminary restructuring plan." Commenters requested that the "preliminary restructuring plan" be clearly defined as well, and that the regulations specifically state what type of information must be provided by the borrower by requiring that the lender furnish a list of all the financial information and repayment projections that the lender will use to make its decision. Another commenter in asking for clarification of a "preliminary restructuring plan", wanted to know how much information constitutes a good faith application for restructuring.

A few farmer groups suggested that to emphasize and clarify "preliminary", the

regulations should state that a borrower can always amend his plan and that the borrowers should be informed by the lenders of the costs of foreclosure and restructuring at a meeting. Another suggestion was made that the regulations specify stages and timelines for the preliminary restructuring phase. One member of Congress suggested that the regulations need to stress that submission of an application for restructuring is a "preliminary" document in that the law intends to give borrowers the ability to submit a plan which would be considered as a starting point for working out the loan with a lender. Further, the comment suggested that it must be made clear that the lenders have to work with the borrowers.

Four State attorneys general expounded on the suggestion that the costs of foreclosure and restructuring be disclosed to borrowers by suggesting that the computational steps and assumptions used to arrive at the costs be provided. However, unlike most of the other comments, they were of the opinion that detailed regulations governing every possible calculations were not the solution. Rather, they opined that the better solution is for FCA to develop a process which would provide for disclosure and good faith bargaining.

One lender suggested that a definition of "loan application" or "application for a loan" be inserted in § 614.4440, as well as § 614.4512 to clarify the distinction between an "application for restructuring" and a "loan application". The lender stated that § 614.4441(c), which sets a 30-day time limit in which an applicant must request a review, may be interpreted to apply to restructuring applications, as well as to loan applications. However, as the lender pointed out, the time period in which an applicant must request a review of a restructuring application is 7 days after receipt of the lender's notice, not 30 days as may be inferred by § 614.4441(c) of the proposed regulations. The lender also stated that the duplication of "application for restructuring", "distressed loan", and other terms in § 614.4512 as well as in § 614.4440 is not necessary. Finally, FCCA commented that the word "normally" should be deleted from § 614.4440(c)(3), as well as from § 614.4512(a)(3) to conform to the statute and to avoid needless confusion and uncertainty. FCCA reasons that to the extent that "normally" would limit a lender's inquiry to information appropriate for making sound credit decisions in the context of restructuring, it is redundant. FCCA further argues that to the extent that "normally" might

be read to prohibit a qualified lender from obtaining information necessary to make a decision, it conflicts with the statute.

FCA does not believe it is appropriate to change the definition of "application for restructuring" for the following reasons. FCA agrees that the borrower and lender must work together in this process. However, no specific language was suggested on this point, and FCA believes that none needs to be inserted into this regulation since it requires cooperation between borrower and lender. The regulation requires: (1) A preliminary restructuring plan that is not finalized, but proposed, (2) the restructuring application must be submitted on appropriate forms prescribed by the lender, and (3) there must be sufficient information and repayment projections, where appropriate, to allow a lender to support a decision. Therefore, the preliminary plan may be revised before it becomes final, based, in part, on communications between borrower and lender. Also, where information is not sufficient to allow the lender to support a sound credit decision, the lender must communicate with the borrower such that the borrower provides sufficient information to enable the lender to make a sound credit decision. A reading of the statute and regulation, indicates that both parties must put forth a good faith effort and work together.

FCA disagrees with those comments that requested a list of specific information that must be included in the application. The regulations already prescribe what must be included in the application (as discussed in this section) and require that the lender provide "all materials necessary to enable the borrower to submit an application for restructuring" (see § 614.4516(a)(2)). However, specific items other than these requirements cannot be identified and accordingly the regulation cannot prescribe such items. Each restructuring application will be different, depending on the type of loan, borrower, lender, and other factors. The information that constitutes a "good faith application" may very well be different in each case and FCA cannot provide an exhaustive list of specifics. For these reasons, FCA should not and cannot create uniform, consistent procedures. Similarly, the regulations cannot specify stages and timelines for the preliminary restructuring phase, because this may be different depending on the circumstances.

FCA does not agree that a "preliminary" plan should allow a borrower to continually amend his plan



in every instance. There must be a good faith effort on the borrower's part, just as there must be good faith on the lender's part. As with any process, reasonableness must be a guide. The borrower cannot unnecessarily delay restructuring or foreclosure by continually amending his plan, and as discussed below, a lender cannot create unnecessary delays and obstacles to restructuring by unreasonably requiring unnecessary documents as part of the application.

FCA disagrees with the comments that requested that the lender provide the costs of foreclosure and restructuring. In most cases this will be impossible for a lender to do until and after the borrower has submitted an application for restructuring. To the extent that this comment meant that a specific list of what the lender is including in these costs should be provided, as stated immediately above each case may involve different costs. Thus there is no one list of items that objectively will be part of each and every application. FCA agrees with the comment from the State attorneys general suggesting that a process, not a detailed list is the solution. As explained immediately below, the regulations provide for such a process. (FCA has further addressed this issue of the lender providing information to the borrower, but *after the decision* is made, in the discussion in § 614.4518 *Notice of Denial of Restructuring and Right to Review*.)

Although FCA agrees with the comment that the language of the statute gives the borrower the ability to submit a plan which may be considered as a starting point for working out the loan with a lender, it does not agree that this means that a restructuring application is a preliminary document. The language found in the 1987 Act clearly makes a distinction between an "application for restructuring" and a "preliminary restructuring plan." The preliminary plan is a part of the application and while the plan may in some cases serve as a starting point, the application must be in a more finalized form. The application must contain sufficient financial information and repayment projections to allow the lender to make a sound credit decision. Where that information is not provided, the lender must contact the borrower to obtain that information to enable the lender to make a sound credit decision. The lender cannot summarily dismiss an application because it is incomplete. However, FCA does not mean to suggest that the lender should continue to deal with a recalcitrant borrower, such that a

lender is unable to take any action concerning the distressed loan. Once again a reasonableness standard must be applied.

FCA acknowledges that the comment concerning what is applicable to a loan application, as opposed to a restructuring application expressed valid concerns. Accordingly, FCA has included a definition of "loan application" and revised the regulation to clarify that § 614.4441 applies to a loan applicant, not a restructuring applicant. Thus, a loan applicant has 30 days from notification in which to request a review and as stated in § 614.4518, an applicant for restructuring has 7 days from notification in which to request a review. FCA does not agree that duplication of the definitions in §§ 614.4440 and 614.4512 creates confusion. Since most sections in Subpart L are applicable to restructuring applications, as well as loan applications, the definitions must appear in both subparts.

Finally, regarding FCCA's comment that "normally" should be deleted from the regulations, FCA did not intend its insertion to limit the lender from requesting information necessary to make its decision. Thus, "normally" will be deleted. However, this deletion does not mean that a lender may seek more information upon which to base a sound credit decision than it would usually need in the ordinary course of business. The lender may not make unreasonable, or unusual demands for information from the borrower.

#### *Section 614.4440(e) Distressed loan.*

One commenter suggested that the regulations should require a lender to notify a borrower in writing when a loan becomes distressed and that the borrower should have an opportunity to discuss the status of the loan. One comment suggested that this notification be provided at least 45 days after a payment is missed. FCA does not believe it is necessary for a lender to notify a borrower when his loan is distressed since § 614.4516 *Restructuring Procedures*, requires a lender to notify a borrower that his loan may be suitable for restructuring and this must be done not later than 45 days before foreclosure proceedings begin. In order for a lender to notify a borrower of the restructuring process, a determination must first be made that the loan is distressed. Thus, a borrower will know that the loan is distressed when the notification concerning restructuring is received. In addition, one of the characteristics of a distressed loan will usually be that the loan is delinquent, and the borrower will be

aware that his own loan payment is past due. In any event, FCA does not believe that a borrower is prejudiced if he is not first notified that a loan is distressed, as long as there is timely notification of restructuring rights. In response to the comment requesting that the regulation provide for an opportunity for the borrower to discuss the status of his distressed loan, FCA does not believe that § 614.4440(e) must require this because FCA cannot conceive of a situation whereby a loan has become distressed and there is no discussion between lender and borrower at some point in time. In any event, § 614.4516 provides the borrower with an opportunity to review the status of a distressed loan.

Comments were submitted requesting that the regulations clarify the definition of a "distressed loan". Two separate issues were raised. The first issue was raised by FCCA in its comments on FCA's receivership and conservatorship regulations, 12 CFR Part 611 (53 FR 16934, May 12, 1988). FCCA questioned whether loans sold by a receiver to entities that are not qualified lenders, would be subject to borrower rights. The second issue concerns whether adverse repayment trends on other than System loans may be considered by an institution when determining whether the loan held by the institution is distressed. In response to FCCA's inquiry, there is no need to address this issue in the context of the borrower rights regulations. In the context of fulfilling its duties established pursuant to the receivership provisions in the Act, FCA determined that borrower rights are applicable to loans that may be sold by the receiver for the former System institutions to entities that are not qualified lenders.

Regarding the second issue of whether lenders may consider adverse repayment trends on other than System loans, the definition of distressed loan must be examined. The definition states, among other things, that a "distressed loan" is "a loan for which the borrower does not have the financial capacity, to pay according to its terms and which exhibits one or more of the following characteristics: (1) The borrower is demonstrating adverse financial and repayment trends \* \* \*." The lender must determine whether the borrower has the financial capacity to repay his loan. In order to make such a determination, a lender may have to consider repayment trends on other loans or accounts, where such information is available.

Some comments suggest that "as determined by the lender" be deleted



from § 614.4440(d) as commenters argued that the phrase narrows the statutory definition by prohibiting the borrower from initiating contact with the lender if the borrower thinks that he will be unable to meet upcoming payments even before the lender is aware that a distressed loan may exist. One comment suggested that "as determined by the lender" be deleted, thus prohibiting a policy of one lender that does not consider a loan to be "distressed" if the borrower is able to pay, but chooses not to. In response to the first comment, FCA does not believe that the phrase narrows the statute. Nothing in the statute or the regulations prevents a borrower from voluntarily contacting a lender if a borrower wishes to discuss restructuring. Also, § 614.4516(c) of the regulation states that a qualified lender may voluntarily propose a restructuring plan. In response to the second comment, FCA believes that the statutory framework does not contemplate extending restructuring rights to an individual who although able to pay has chosen not to. To allow otherwise would be to send a message to all System borrowers that they need not be concerned with repaying their System loans. This would be an unjustified burden for all paying borrowers, including those paying under restructuring plans. The legislation is intended to assist those borrowers with financial difficulties, not those seeking to renegotiate or avoid contractual obligations for their own convenience and benefit.

#### *Section 614.4440(g) Qualified lender.*

One comment suggested that "qualified lender" was vague, but offered no alternative or additional language to clarify the alleged vagueness. As the regulatory definition is consistent with the statutory definition, FCA does not believe further clarification is needed.

FCA was questioned as to whether an institution that is placed in receivership or conservatorship is itself a "qualified lender." One commenter suggested that the question be answered affirmatively by adding the following language to § 614.4440(f)(1): "including its conservator or receiver." For the System institutions that were recently placed into receivership, FCA determined that the receiver must afford borrower rights.

A member of Congress commented on the definition of qualified lender under § 614.4512 concerning Federal Intermediate Credit Banks (FICBs). The definition of qualified lender includes any institution that "makes loans" as "loans" are defined in the Act.

#### *Section 614.4440(h) Restructure or restructuring.*

Comments suggested that the borrower and lender must use the same definition of "financially viable." One comment questioned what actions must be taken to be considered "financially viable", and what does "the taking of any other action" mean. However, no specific language was suggested by the commenters to define these terms and FCA does not believe that specific language is appropriate since financial viability as well as other actions that may be taken to modify the terms of a loan must be determined on a case-by-case basis.

#### *Section 614.4441 Notice of action on loan application.*

One comment suggested that FCA prescribe a certain notice or form for the notice for all lenders. As long as lenders provide the information required by this regulation, FCA believes that the form of the notice is within a lender's discretion.

One comment suggested that more information be provided to borrowers before any adverse action is taken. With some minor exceptions discussed below, FCA believes that the notice is adequate as prescribed by the regulations. One comment suggested that the lender notify the borrower of his right to an independent appraisal and the method and procedures of exercising this right. FCA agrees and has revised the regulation accordingly.

Regarding paragraph (a) which requires that the borrower be notified of the reasons for the lender's action, one comment suggested that "tangible" reasons be provided. The remainder of the comments on this issue suggested that all factors, calculations, assumptions, and reasons upon which the lender's decision is based be provided to the borrower. One comment suggested that all factors and calculations be provided only if the lender denies the application to enable a borrower to decide whether he would like to seek review of the decision.

FCA believes that *specific* reasons for a lender's decision on a loan application must be provided to the borrower and the regulation has been revised accordingly. Specific reasons will enable a borrower to decide whether to seek review. FCA agrees with the comment that suggested that such information need only be disclosed when there has been a denial of the application and the regulation so provides. Finally, one comment suggested that notice be given to all primary obligors. For the reasons

discussed above in § 614.4367(e), FCA disagrees.

#### *Section 614.4442 Credit Review Committee.*

One comment suggested the title of this section be Credit Loan Review Committee. FCA disagrees since pursuant to section 4.14(b) of the Act, the committee will review denials of restructuring applications, as well as loan applications.

A comment suggested that all avenues should be explored with the loan officer before the committee process begins. FCA agrees with this comment since there is no right to a credit review until the institution has first made a decision. Thus, the lender, usually through the loan officer, and the borrower were engaged in a cooperative effort to attempt to find solutions before the credit review committee process began.

General comments were submitted that suggested the regulations should clearly spell out the function and procedures of the committee, emphasizing the importance of the committee being an independent review process and more than a mere "rubber stamp". Included in these procedures should be guidelines of eligibility for serving on the committee, including those individuals who are to constitute "farmer board representation" as required by section 4.14(a)(1) of the Act.

The FCA does not believe that it should specify additional functions and procedures for the credit review committees other than those prescribed by the regulation. The regulation states that the function of the committee is to review adverse credit decisions. This function is prescribed by section 4.14 of the Act and FCA is not persuaded that the regulation should require functions other than those in the Act. As long as those committees function as required by statute and regulation, FCA believes that each lender is entitled to develop its own set of procedures. The statute and regulations provide for adequate safeguards, including that the loan officer involved in the adverse credit decision being reviewed is prohibited from serving on the committee. Also, § 614.4444 requires that records of the committee be kept and these records will be used, by FCA examiners to determine whether the committee is functioning properly.

One comment suggested that the borrower should receive written notice about his right to appear in person and about what documentation will be considered. Section 614.4441 requires notification of the right to appear and an explanation of the process, which



includes the ability to present documents to support information contained in the unsuccessful application, as provided in § 614.4443(b). One comment suggested that the lender notify the borrower of what documents he or she may submit to ensure that new plans or documents are not submitted which do not address the original decision. The commenter requested that FCA emphasize that this is a review process and not an opportunity for the borrower to bring up new issues. FCA believes that the regulation clearly indicates that this is a review process and is not persuaded that the regulation needs to be revised.

Many comments were received on the role of the loan officer. The same comment was received from many individuals suggesting that the credit review committee should not be allowed to influence a loan officer's decision. Other comments suggested the converse, i.e. that the loan officer not be allowed to influence the committee. Comments suggested that the loan officer's role as it relates to the committee should be clearly defined to be a minimal one and that more guidance should be given on what it means to "serve" on a committee. One comment from a member of Congress suggested that since section 4.14(a)(2) of the Act prohibits a loan officer involved in the initial decision from serving on the committee, that officer should not be present during the review, voice any opinion before the committee, or participate in the committee review process in any way. A lender responded to this comment by suggesting that "appearing" before the committee is not the equivalent of "serving" on the committee. The lender stated that a loan officer should be able to present information and answer questions before the committee, but should not "serve" by deliberating on and voting with the committee.

The loan officer's role should be determined by the credit review committee or the lender, as long as the officer does not *serve* on the committee. The statute prohibits "*serving*" on the committee when it reviews a loan on which the officer made the initial decision, not *participation* on the committee and it would be unreasonable to define "serve" as broadly as suggested by the Congressman's comment. The credit review committee must make informed decisions, and in order to do so it is reasonable to assume that it will need to be informed by the one person most knowledgeable on the lender's decision, i.e. the loan officer. Thus, it would not be inappropriate for

the loan officer to be at the review to present the reasons for the lender's decision or to answer any questions that the committee may have. The only prohibition is that the loan officer may not "serve" on the committee, by being present or participating during the committee's ultimate deliberations, voting, or final decision-making process.

Many comments were received on eligibility for membership on the committee. Comments suggested the following: That a farmer should be on the committee, that a farmer should be on the committee to ensure stockholder control, that a borrower's representative should sit on the committee, that a borrower should be able to choose an impartial committee member, that the borrower should be able to refuse any individual who worked with the borrower in any "adverse" situation in the past, that the borrower should be able to refuse at least one member if the borrower can show bias, that the borrower should be able to refuse a member "for cause", and that a borrower should be able to refuse a member under any circumstances. In addition, there were many comments on the requirement for a director to serve as a member, which are discussed immediately below.

Regarding the requirement for a farmer on the committee, there is a requirement for "farmer board representation" in the statute. At the outset, FCA must clarify that a strict reading of this statutory requirement would be incorrect. FCA previously considered this issue (51 FR 39486, October 28, 1986) and expressed the opinion that the term "farmer board representation" means that in order for a person to serve on an institution's board that person must be a farmer, rancher, or producer or harvester of aquatic products. There have not been any statutory changes that would cause FCA to revise its position. Thus, FCA reiterates this position and states that whenever the term "farmer representation" is used, FCA is referring to farmer, rancher, or producer or harvester of aquatic products.

In response to those comments advocating farmer representation, the FCA has required farmer representation in the regulations. System institutions' boards are elected by the stockholders, who must be farmers, ranchers, and producers or harvesters of aquatic products. One of these board members must sit on the committee and if the stockholders are not satisfied that there is adequate "farmer representation", then the stockholders may remedy this situation during the next board

elections, by electing a board that will better serve the stockholder/borrower interests. (There may be some qualified lenders that are not System institutions, i.e. "other financial institutions" (OFIs) as described in section 2.3(a) of the Act. These are discussed below concerning the credit review committee and its composition.)

All of the other suggestions concerning the composition of the committee seem to be based on the concern that the borrower will not have adequate representation on the committee, and thus not receive a fair review. However, FCA does not believe this to be a valid concern. The review process adequately ensures that a borrower will receive a fair review. A borrower may be accompanied by counsel or any other representative of such person's choice to seek a reversal of the decision. Furthermore, the regulations prohibit the loan officer involved in the adverse credit decision from serving on the committee. Thus, FCA does not agree with the suggested changes to the regulation.

Comments were submitted suggesting that the credit review committee meeting be held in a "neutral" or "convenient" location, and not at a System institution's office. FCA believes that the lender or the committee should be responsible for selecting the location. Given all of the processes discussed in this section, which the borrower has available to him to ensure a fair review, FCA does not believe that prescribing a "neutral" or "convenient" location in the regulations is necessary. Furthermore, assuming that a "neutral" or "convenient" location can be agreed on by both parties, FCA does not believe it is an efficient use of a lender's resources to require the lender to attempt to find a location, transport the committee to a location, or pay for the use of such a location when the lender's office may adequately serve as a meeting place for the committee.

A Federal land bank association (FLBA) is not a qualified lender unless or until it becomes a direct lender and "makes loans" as "loans" is defined in the Act. Therefore, FCCA, three lenders and one individual farmer expressed concern over the fact that an FCB board member is required to serve on a committee that must review many decisions that may have been delegated to or made at a number of FLBAs. The comments suggested that the Act does not require that a qualified lender's board member be on the committee, only that the qualified lender's board of directors establish one or more credit review committees with "farmer board



representation". The commenters argued that to require an FCB director to serve on the committee at the local level will create delays and costs because the FCB director may not be as familiar with local conditions nor as appreciative of the circumstances surrounding particular adverse credit decisions as an FLBA director would be. Thus, the commenters asserted that there will be added time and expense for these directors to become knowledgeable about local conditions, and to meet on the local level at many associations.

The comments further assert that Congress intended for borrowers to have "grass roots" involvement, and for the FCB board directors to have flexibility in redelegating their duties. When an FCB committee reviews an adverse credit decision made at an FLBA on a loan which exceeds an FLBA's loan approval authority, it was further stated that it is questionable whether FCB board participation satisfies the statutory requirement of "farmer board representation" or the "grass roots" representation since FCB board members are not elected by the borrowers. FCCA noted that there will be instances where although an FCB retains its direct lending authority (and thus is the "qualified lender"), most adverse credit decisions will continue to be made by the servicing FLBAs under their delegated loan approval authority. Thus, FCCA argued that the proposed regulation is internally inconsistent, and will at least have to be revised to reflect the fact that extensive loan approval authority has been delegated to the FLBAs.

FCCA suggested that regular board members, as duly elected representatives of the local association, not advisory members should be allowed to serve on a committee, with an equal number of loan officers. Furthermore, FCB's should be allowed to prescribe guidelines for associations and the FCB, within which committees must operate and to delegate the committee function to the FLBAs with respect to those long-term loans that are serviced at the association level and for which the FLBAs have loan approval authority. FCCA asserts that its position is consistent with FCA's initial regulation issued in final form in October 1986, appropriately reflects the unique statutory and regulatory relationship between banks and associations, and provides the borrower with a review by the actual decisionmaker.

The lenders also expressed somewhat of an opposite concern that advocated the lines of authority of the committees

flow upward, as opposed to downward. The lenders are fearful that the proposed regulations prevent the review committee function from being performed at the bank level even though production credit association (PCA) loans may require bank prior approval or OFI loans may be submitted to the banks for discount. Thus, even though the ultimate credit decision would be made at the bank level, the PCA or OFI will perform the credit review functions pursuant to the language in the proposed regulations. The lenders state that if the credit review decision is not made at the bank level, or at least with bank representation, the review process is not meaningful to the borrower. Thus, one lender suggested that "qualified lenders" should be defined to include an FCB when it makes the credit decision, so that the FCB may use its committee to review the loan. In opposition to this view, one comment was received that suggested that when lending authority is transferred from an FCB to merging associations, the requirement of "farmer board representation" would be better satisfied by representation from the originating association even though the loan may require prior approval.

FCA disagrees with FCCA's and the lenders' assertions that FCB board members may delegate their responsibilities to FLBA board members. FCA has previously considered this issue and for the reasons previously articulated, FCA does not believe that a change is warranted. FCA reiterates that stockholders have a legitimate interest in having an elected board member of the institution actively participate on the credit review committee. Therefore, delegation to an alternate who may perform the credit review committee duties is permissible, as long as the alternate is also a member of the same institution's board. In response to FCCA's assertion that the regulation is inconsistent because FLBA's have been delegated certain authority, the FCB is ultimately responsible and maintains ultimate authority for those associations unless and until they become direct lenders.

FCA recognizes that PCAs require prior approval on certain loans as prescribed by regulation. The borrower should be allowed the opportunity to have an adverse decision reviewed by the actual decisionmaker. FCA does not intend that the credit review committees at the association level should review a decision ultimately made by the bank and has changed the regulation accordingly. Thus, in response to both suggestions made by the lenders and FCCA, FCA has ensured that the credit

review function is performed by the ultimate decisionmaker.

In connection with the concerns centering around FLBAs and PCAs, FCA believes it appropriate to address the issue of agricultural credit associations (ACAs). The Act authorizes the merger of a PCA and FLBA into an ACA. An ACA is a qualified lender, since it would make "loans" as that term is defined by statute and as such is subject to all of the borrower rights provisions of the Act and regulations.

Comments were also submitted requesting guidance for OFIs without boards of directors. All qualified lenders, even those without boards of directors are required to have a credit review committee pursuant to statute. The new statutory provisions on credit review committees apparently did not contemplate the situation where a lender does not have a board of directors. Thus, Congress was silent on this issue. However, Congressional intent dictates that qualified lenders without boards establish review committees similar to those as established by lenders with boards. Thus, for those lenders without boards, any corporate entity similar to a board should establish a committee(s) and any individual occupying a position similar to a board member should sit on the committee, so that lenders without boards have a credit review committee process as similar as possible to lenders with boards. All the other requirements of the regulation are applicable. FCA does not believe it should establish specific guidelines at this time because each lender without a board may offer unique problems. Thus, FCA will address these problems as they may arise on a case-by-case basis.

#### *Section 614.4443 Review process.*

A comment was submitted that suggested that the regulation should apply to both loan and restructuring applications. The regulation is intended to be applicable to both and the final regulations will clarify this by providing that § 614.4518 refers to § 614.4443. Many comments also understood paragraph (b) to be applicable only to loan applications, and not restructuring applications. Due to the many comments submitted on this issue, language will be added to paragraph (b) to clarify this point.

#### *Section 614.4443(a) Personal appearance.*

FCCA suggested that for clarity "such person" be added before the word "choice" and that "and/or" should be replaced with "or" to conform to the



statutory language. FCA agrees with these suggestions and the regulation has been changed accordingly. However, FCA does not intend its replacement of "and/or" with "or" to in anyway limit a borrower's right to have available more than one representative, wherever reasonable or appropriate.

#### *Section 614.4443(c) Independent appraisals.*

Most of the comments received were on the criteria for "independent" appraisals and "independent" appraisers. Comments suggested that an independent appraiser should be defined as: An individual not being employed by the System or FmHA during the 2 years prior to the appraisal, "accredited appraisers approved by a qualified lender but not employed by or contracting for said lender", and never employed as an appraiser or loan officer for the lender. A comment from the Society of Real Estate Appraisers suggested that more attention should be given to selecting professionally qualified appraisers. Other comments questioned what experience an appraiser would need to qualify for the lender's list. All of these issues will be addressed in a separate Federal Register document on eligibility and lending authorities.

Comments were submitted that suggested that the regulations allow for an appraisal at the first point of disagreement between the loan officer and borrower or at the first point in the restructuring process. A comment was submitted that suggested that appraisals should be allowed when a borrower applies for a new loan or for restructuring. Other comments suggested that the regulations not limit the right to an appraisal to situations where additional collateral is requested by the lender in a restructuring context. As support for this, one commenter cited to the H.R. 3980, the Technical Amendments bill. One commenter stated that this requirement for additional collateral implies that the lender has the right to demand additional collateral which this commenter interpreted as being in contravention of the Act. The commenter reasoned that additional collateral cannot be a precondition for restructuring because the standard for the lender's decision is limited *only* to determining whether the cost of restructuring is less than the cost of foreclosure, and additional collateral should not factor into this decision. Another comment stated that the regulation limits the right to an appraisal to the credit review committee process, while the statute permits appraisals

during restructuring, as well. This commenter suggested that the regulation permit an appraisal during the review process, any time additional collateral is requested, or if additional collateral is proposed as part of a restructuring plan.

The statute prior to passage of the technical amendments bill stated that an appraisal may be requested as a part of an appeal before the credit review committee by an applicant for a loan (section 4.14(d)(1)), and by an applicant for restructuring for which additional collateral was demanded by the lender (section 4.14(d)(4)). Although the technical amendments bill did not eliminate section 4.14(d)(4), it broadened the rights of a restructuring applicant to allow an appraisal in any restructuring context whether or not additional collateral was demanded by the lender. The regulations accordingly conform to the statute as revised by the changes in the technical amendments bill. In response to the commenter that stated that the lender cannot demand additional collateral, this individual failed to consider section 4.14(d)(4) of the Act which states that an appraisal shall be permitted if additional collateral is demanded by a lender when determining whether to restructure a loan.

One comment suggested that a borrower should be allowed to use any independent appraiser approved by the lender. One lender complained that providing a copy of the appraisal to the borrower limits the lender's negotiating power and ultimately decreases the price of land, thus advocating that appraisals not be disclosed to the borrower. Another commenter suggested that a request for an appraisal could be made to regional supervision prior to the review committee stage to speed up the process and to help the borrower decide whether to appeal the lender's determination. The statute specifically addresses these issues in section 4.14(d)(2), (3), and (1), respectively, and FCA is not persuaded that the regulatory requirement should be inconsistent with the statutory one. Thus, the borrower must select *one* of three appraisers, the lender must provide a copy of the appraisal to the borrower, and the appraisal may be requested as a part of the request for the review process. In response to the comment that suggested that the request for an appraisal should be made to regional supervision, FCA is of the opinion that the manner in which the request is dealt with at the institution is in the lender's discretion.

One comment suggested that the independent appraisal process should be described in § 614.4518. FCA believes

that it should be referenced, not described, in § 614.4518 and the regulation will be changed accordingly.

FCCA and one lender commented that the 30-day time period for providing the list of appraisers, providing a copy of the appraisal, and considering the results of any such appraisal is unrealistic. FCCA asserted that all of these requirements cannot be accomplished within the 30 days, especially since there is no time period specified within which the borrower must select an appraiser. FCA agrees and will revise the final regulation accordingly. FCA has also required that the borrower select an appraiser within 30 days from the borrower's request for an appraisal. This revision to the regulation is supported by the language in section 4.14(d)(2) of the legislation which indicates that Congress was concerned with the potential delay in this process. Requiring the borrower to select an appraiser within 30 days of his request for an appraisal will help ensure that this process is not unnecessarily delayed. The lender shall provide the list to the borrower as soon as possible after his request for an appraisal to allow the borrower adequate time to select the appraiser within the 30-day period.

One lender suggested that the proposed regulation should be revised to permit or encourage a borrower to contract with one of three appraisers directly to minimize any allegations of a lender's influence. FCA believes that these allegations can be better addressed by ensuring that appraisers perform their job in a professional manner.

#### *Section 614.4443(d) Decision.*

One comment stated that use of the phrase "sole discretion" implies that there are subjective standards that the committee may use in making determinations, and thus ignore the cost of foreclosure/cost of restructuring test. This commenter also stated that the language in paragraph (d) implies that there is no further review of a committee's decision and that the language should be revised to make it clear that this is not the case. One comment suggested that the reviews and decisions should not be so expeditious as to give a borrower inadequate preparation time and that the decision should not be on the same day as the deadline for a borrower's response to a lender's counterproposal. Another commenter suggested that the review process should be conducted as quickly as possible. Finally, a comment was submitted suggesting that the regulation



should establish a process for documenting the meeting.

FCA believes that some commenters misunderstood the credit review committee process. The credit review committee will be reviewing a determination previously made by the lender. If it was a decision on a restructuring application, the committee will review the lender's decision which would have compared the cost of foreclosure with cost of restructuring, as well as documents submitted by the borrower. Nothing in the regulation states or implies otherwise. The "sole discretion" language is necessary to prevent outside, undue influence on the committee's review and decision. Regarding the comment on further review, the regulations set out the procedures for the Special Asset Group and National Special Asset Council and § 614.4443 does not prevent these procedures from being established where applicable. However, FCA believes that the credit review committee's decision is the final decision of the lender. In response to the comment concerning the expeditiousness of the committee's review and decision, the borrower must be given an opportunity to prepare for the meeting. However, the decision must still be made as expeditiously as possible to prevent undue delay and costs to the lender and borrower. Thus, the words "reasonable effort" are found in the regulation to provide for an expeditious process that allows borrowers adequate opportunity to prepare for the meeting. Regarding the concern of adequate time to respond to a counterproposal, the commenter apparently misunderstood the function of the committee. Any counterproposals should have occurred at the lender's prior decision-making stage or before, and not during the committee review process which is reviewing the decision that was already made by the lender. FCA agrees with the comment that the meeting should be documented. Thus, lenders must keep complete files as established pursuant to § 614.4444 and FCA has revised § 614.4444 to require that minutes of the meetings be maintained as well.

#### Section 614.4444 Records.

FCA suggested that the second sentence should apply to "certified lenders" only and not to "qualified lenders", since lenders are required to have special asset groups (SAGs), only if they are certified. FCA does not agree with this comment. All qualified lenders must keep records because a qualified lender may eventually become a certified lender and the SAG may want

to review past decisions. Furthermore, FCA examiners may need to review the records of qualified lenders as part of their examination process to ensure compliance with borrower rights, as well as to examine for other regulatory concerns. To ensure that adequate records are kept for FCA examiners as well as for the SAGs, FCA has included a requirement that minutes of the credit review committees be maintained.

One individual suggested that borrower files not be destroyed. FCA does not agree that this requirement should be inserted into the regulation since the banks and associations already have their own recordkeeping requirements.

Finally, one comment suggested that procedures for disclosure of information to borrowers be incorporated into this section and that a process whereby a borrower can place items in his file for later review by a SAG or the National Special Asset Council (National Council) must also be developed. These issues are discussed under § 614.4520.

#### Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Rights of First Refusal

Subpart N sets forth restructuring policies and procedures, and requirements for reviews of restructuring decisions. In addition, requirements for System institutions' participation in mediation programs and rights of first refusal are addressed. Other subjects that are discussed are uninsured voluntary and involuntary accounts and protection for certain borrowers.

#### Section 614.4512 Definitions.

FCA has already addressed many issues applicable to this section in its discussion on § 614.4440, *Definitions*. Those that were not discussed or that are pertinent only to this section are addressed below. In general, comments were received criticizing a lack of clarity in the definitions. Yet most commenters failed to specify which terms they felt were unclear. To the extent that specific terms were discussed, FCA has addressed those below.

#### Section 614.4512(c) Cost of foreclosure.

There were a number of comments submitted on this section expressing divergent views. Some farm groups suggested that the definition should be more specific and detailed to ensure consistency. Some commenters offered specific suggestions, such as requiring a lender to compute attorney fees by using a pro rata share of a retainer, when applicable. Another suggestion stated

that the costs should not include assets that a borrower may have, other than the collateral on the distressed loan. One comment stated that when calculating the cost of restructuring, computations on the potential earning stream to be generated by the restructured loan should be used, taking into account the present cost of money to the lender. A suggestion was made that the definition should be more detailed, but on the other hand should also ensure an individual analysis using case-by-case estimates that consider all factors unique to each case. Other comments from farm groups also suggested that the cost of foreclosure be done on a case-by-case basis and that the use of generalized formulas should be discouraged. FCA agrees with the comments that expressed a preference for case-by-case analysis to ensure that each borrower will receive individualized consideration on his loan application. FCA believes that flexibility is necessary because of differences in State law and individual circumstances. Therefore, FCA declines to change the proposed regulation to include a list of factors in the definition of "cost of foreclosure."

#### Section 614.4512(d) Distressed loan.

One commenter questioned whether the financing of the sale of acquired property when no stock purchase is required may be considered to be a "loan" for restructuring purposes. This type of financing is not a "loan" for restructuring purposes, unless the lender treats the financing the same in all respects as if the lender were making a loan to an "eligible" System borrower, as referenced in 12 CFR 613.3000, *et seq.* As a result, purchasers of acquired property who receive financing provided solely to facilitate disposition of that property do not necessarily qualify for borrower rights. If these purchasers wish to have access to those rights, they may do so by accessing the regular lending authorities of the institution.

#### Section 614.4512(e) Foreclosure proceeding.

When the proposed regulations were published, FCA asked for comment on whether the regulation should specify when a foreclosure proceeding begins. FCCA indicated that there was no reason to specify when a foreclosure proceeding begins and with differences between various State laws, and judicial and non-judicial foreclosures, FCCA questioned the utility of such a definition. Although many other comments stated that FCA should define this point in time, no specific



suggestions as to how it should be defined were offered. The comment that came closest to offering a specific suggestion stated that the regulation should reference a point in time at which any action is taken to begin the foreclosure process. FCA believes that the regulation already employs this definition. The statute clearly defines a foreclosure proceeding in section 4.14A(a)(4), as does the regulation as "a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan" or as "the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under title I or II, to effect collection of a nonaccrual or distressed loan." Accordingly, the proceeding begins when the lender begins either of the two actions referenced above. Therefore, FCA does not believe that it is necessary to further define when the proceeding begins.

*Section 614.4512(h) Restructure or restructuring.*

One comment suggested that this term needs to be better defined as it is misleading to borrowers because based on the definition, borrowers may assume that they are entitled to have their distressed loans restructured. FCA does not believe that the definition creates such an expectation and thus declines to revise the regulation. FCCA states that insertion of the word "means" is more limiting than the statute which uses the word "includes" instead. FCA does not agree. The definition in the regulation includes every action that could possibly be considered to constitute a restructuring, thus the definition is not in any way restrictive. In addition, FCA believes that "means" as opposed to "includes" is appropriate to maintain consistency with all other definitions found in these regulations.

*Section 614.4513 Advance payment accounts.*

Some of the comments received on this section indicated a lack of understanding as to the intended purpose of the Act and this implementing regulation. One comment stated that a System institution should not be allowed to substitute or alter which debtors are paid. Some comments asked for an explanation of involuntary accounts. One comment stated that paragraph (b) should be eliminated because it violates a borrower's right to make management decisions. Another comment stated that policy and practice should not allow this paragraph to exist.

Finally, one comment stated that the definition of the terms "uninsured voluntary or involuntary accounts" should be repeated.

The wording and title of the regulation have been revised to clarify the section. The intent of this section is twofold. Both paragraphs are for the benefit and protection of the borrower and lender. Paragraph (a) allows certain borrowers to make advance payments on their accounts and authorizes institutions to accept payments prior to due dates in the loan agreement. Such payments may be applied immediately against the loan or the payments may be placed in an interest bearing account and later withdrawn by the borrower for purposes for which a lender would ordinarily increase a borrower's loan. Paragraph (b) allows institutions to enter into loan agreements that provide for disbursement of funds on a scheduled basis, such as payments made on the completion of construction of a facility which serves as collateral on the loan. This protects not only the collateral, but ensures that certain of the borrowers obligations are timely paid.

Section 4.37 of the statute provides that System institutions may maintain such accounts. Thus, the final regulation will be changed to apply to System institutions, as opposed to qualified lenders.

One comment questioned how these accounts are to be applied in the event that a System institution is liquidated. This issue will be addressed by necessary revisions to the regulations in 12 CFR Part 611 concerning the disposition of these accounts by a receiver in a separate Federal Register document.

*Section 614.4514 Protection of borrowers who meet all loan obligations.*

A farmers group suggested that the regulations should require lenders to notify borrowers of their rights under this section. FCA disagrees with this comment as the statute does not require such notification. A lender stated that neither the Act nor the regulation addresses the issue of default under contractual terms other than failure to meet scheduled payments, referred to as "nonmonetary defaults" by the lender. The lender further asserted that while the proposed regulation could be interpreted to permit appropriate legal action for these "nonmonetary defaults", it would reduce interpretive problems if the regulation addressed the issue specifically. The regulation only speaks to specific actions from which the lender is prohibited, when a borrower has complied with certain obligations. The

regulation does not, nor is it intended to prevent any other recourse that a lender may legally have available to it. Thus, FCA disagrees with the lender that the issue of nonmonetary defaults needs to be addressed.

*Section 614.4514(b) Limits on the reduction of principal.*

One borrowers group commented that the regulation should prohibit a lender from requiring that a borrower reduce the outstanding principal balance of a loan by more than the scheduled amount if a borrower sells or disposes of collateral in the ordinary course of his business or at an otherwise authorized sale. FCA agrees and will revise the regulation accordingly.

One comment suggested that if a lender legally accelerates the principal reduction, the lender should be required to negotiate a new loan agreement independent of the loan contract. FCA believes that the form of the agreement is a matter that should be decided by the parties. Thus, FCA is not persuaded that the language of the regulation should be revised.

*Section 614.4514(d) Placing a loan in nonaccrual status.*

One legal aid organization suggested that the regulation should prohibit a lender from placing a loan of a borrower who meets all of his obligations in nonaccrual status. However, the Act contemplated this possibility. Accordingly, section 4.14D of the Act does not prohibit such action, but affords borrowers certain safeguards if a lender takes such action. Thus, FCA will not change the regulation to contradict the statute by prohibiting such action.

One comment suggested that a time frame should be specified in which the borrower must appeal to the credit review committee. FCA agrees and has provided the borrower with 30 days after receipt of the notification in which to request a review, consistent with § 614.4441.

FCCA suggested that the regulation should be revised by adding "only if" to make it clear that the borrower is entitled to a review only if the placing of a loan in nonaccrual status results in an adverse action. In response to FCA's request for comments in the preamble to the proposed regulations, FCCA also stated that the one example of "adverse action" in the regulation helps to clarify what an "adverse action" is and that there is no significant benefit from including additional examples or further defining "adverse action." Although other commenters suggested that



"adverse action" be further defined, no other examples of "adverse action" were submitted, and FCA does not believe that any further examples are necessary. Regarding FCCA's comment suggesting insertion of "only if", FCA believes that the wording of the regulation is clear. However, FCA has underlined the word "and" for purposes of emphasis.

*Section 614.4515 Restructuring policy and reporting.*

*Section 614.4515(a) Restructuring policy.*

Comments were submitted requesting that the regulations impose conformity among the lenders by setting forth in detail the form and content of the policies and that FCA review the policies. At a minimum, FCA was urged to offer guidance on the content of the policies. One individual commented that FCA needs to ensure that the policies establish guidelines which will keep costs down and prevent unnecessary paperwork and other burdens that may hinder institutions' competition with other financial lenders. Finally, one comment suggested that the policy and all related information should be submitted to the borrower before the submission of his restructuring plan.

As stated above in the discussion under the general comments, FCA will not micromanage institutions by prescribing every detail that must be included in the policies. FCA has required in § 614.4515(a)(1) that the policy be adopted under § 4.14A(g), and pursuant to this section, the policies have been submitted to FCA. However, the statute does not give FCA approval authority, as requested by one commenter. In fact, Congress initially gave FCA approval authority over the policies, and later deleted this provision from the language of the Act. Thus, FCA does not believe that Congress intended for the agency to prescribe the specific content of the policies. In response to the comment that requested the policy and all related materials be sent to the borrower before submission of a restructuring plan, § 614.4516 requires that this be done.

A Congressman alleged that borrowers who are not delinquent, but nevertheless are "distressed" are being sent restructuring applications and even though these borrowers are current, institutions are using the distressed status as a means of foreclosing on current borrowers. The commenter suggested that this is contrary to the intent of the Act. There is a section of the Act specifically addressing those borrowers who meet all loan

obligations. If there have been violations of the law or regulation, FCA will address these problems through its examination, supervisory and other authorities, as appropriate.

One individual commented that lenders should be willing to provide credit to effectuate restructurings. However, in some instances this may not constitute safe and sound lending practices. In any event, FCA does not believe that it should dictate to lenders or borrowers how loans should be restructured. This decision will be made by each lender on a case-by-case basis after considering material submitted by the borrower. As long as the lender follows the guidelines and requirements set out by safe and sound practices, statute and regulation, the method which accomplishes the restructuring is within discretion of the lender.

A farm group suggested that FCA should require institutions to update their policies, particularly if a lender's semiannual reports indicate that there have been fewer restructurings as compared to other institutions. As stated in the preamble to the proposed regulations, FCA anticipates that institutions will update their policies as the restructuring process becomes more familiar to them. However, FCA does not see a need to require revisions to the policies at this early stage.

*Section 614.4515(b) Semiannual reports.*

One comment suggested that no foreclosures or denials of any applications be permitted until the institutions comply with § 614.4515(b). Another comment suggested that the initial report to FCA on loans eligible for restructuring should serve as a benchmark before any restructurings are completed. However, if adopted, these suggestions would be contrary to law. The new provisions of the Act were effective as of January 6, 1988, unless stated otherwise.

A farmers group commented that the reports should contain the disposition of the restructuring applications, and of appeals to the credit review committees. System institutions requested guidance on whether the reports should be based on month-end figures, as opposed to daily average balance figures and also questioned when a loan is no longer considered "distressed" for the purposes of the reports. The initial reports were to have been filed before these final regulations could be published. After FCA has had the opportunity to review and analyze at least the first set of reports, it will be better able to specify the required content in more detail. In accordance with an FCA booklet, the

first report was to be filed no later than August 31, 1988. After analyzing those reports, FCA will advise institutions of the future scheduling for filing the reports.

*Section 614.4516 Restructuring procedures.*

A number of comments from borrower and farm groups suggested that more information be sent to the borrower along with the notice. Comments submitted suggested that detailed information (such as a standard formula used for calculating holding costs, the minimal interest rate that the lender will consider) and all calculations should be provided to the borrower at or prior to the meeting so that the borrower is better able to submit a restructuring application. Commenters asserted that borrowers are uninformed as to what constitutes an adequate application, unless the lenders are able to offer some guidance. As discussed in § 614.4440(c), FCA agrees that there must be communications between borrower and lender during the restructuring process. However, FCA also believes that it is impossible to provide a specific list of information in the regulation that must be considered by the lender in making its determination. This will vary by loan, restructuring plan, location and other factors.

It was suggested that lenders send an application for restructuring along with the notice. Comments suggested that the lender should offer help to the borrower in filling out forms and that the notice should contain more direction on how to present a restructuring plan and what information needs to be provided by the borrower. This paragraph requires that the lender send all materials necessary to enable the borrower to submit an application, and these forms may include an application. However, to require the lenders to assist the borrower in submitting restructuring plans would place unreasonable costs on the System and may create potential liability for the lender by possibly compromising the loan contract. A borrower must take responsibility for submitting his own initial plan and application. The lender is required by § 614.4516(a)(2) to provide borrowers with all materials necessary to enable the borrower to submit an application. Furthermore, when a lender does not have enough information to make a sound credit decision, the lender must contact the borrower to obtain such information. However, a lender cannot provide a specific list of "required information" because this may be different in each case.



Many comments were received concerning the "preliminary plan." Comments suggested that the notice should state that the plan is preliminary and explain what constitutes a preliminary plan, and state that the plan may be further refined in discussions with the loan officer. Comments also suggested that the notice should define restructuring and what happens if a borrower does not respond. The purpose of a notice is to briefly and succinctly notify a borrower of important rights that are available to him. A notice is not intended to inform a borrower as to entire processes. While lenders may opt to include more information in the notice, FCA believes that the notice is adequate. The notice must be provided along with a copy of the restructuring policy which must include an explanation of the procedure for submitting an application, pursuant to § 614.4516(a)(1) and section 4.14A(g) of the statute. Thus, the policy that is sent with the notice will serve the purpose of informing a borrower of his right to submit a preliminary plan. In response to these comments requesting that the notice inform borrowers that the alternative to restructuring is foreclosure, FCA agrees and has revised the regulation accordingly.

Commenters questioned whether the borrower must submit a preliminary plan prior to or after the meeting with the lender. Comments were submitted expressing both views on this issue. Since lenders and borrowers seem to prefer both options, and FCA believes that both approaches may be beneficial, the proposed regulation has not been changed to specify when the plan must be submitted in relation to the meeting.

One comment suggested that the borrower have the opportunity to meet with an individual other than the loan officer in the event of a personality conflict with the officer. FCA does not believe that the regulations should be rewritten to accommodate personality problems that may exist between borrower and loan officer. This would place an unrealistic burden on the lender, since some institution offices only have one loan officer available. Furthermore, borrowers who feel they have been denied a fair review of their restructuring application have recourse to the credit review committee.

One comment stated that the loan officer should be required to inform the borrower orally that the restructuring request must be in writing. FCA agrees that the borrower must be informed that the application must be in writing. However, FCA does not believe that the regulation must state that a borrower be

informed orally, since the regulation requires that the lender's notification include with it "all materials necessary to enable the borrower to submit an application for restructuring." Thus, the borrower will be informed of this fact.

Comments suggested that the notice be sent certified mail and that the notice, policy, and materials, should be sent to all primary obligors and their attorneys. The borrower is protected by the requirement that the notice be sent no later than 45 days before foreclosure proceedings begin. Thus, it does not matter how the notice is sent and FCA will not require the lenders to use certified mailings. However, FCA expects that the lender may choose to use certified mail as a practical means of ensuring that the notice has been timely provided to the borrower. For the reasons discussed in § 614.4367(e), FCA will not require the lenders to send the notice to all primary obligors. If a borrower wants the notice to be sent to his attorney, all the borrower has to do is notify the lender of this. A lender should comply with this request since notification to a primary obligor's attorney complies with the regulatory requirement of notification to the primary obligor.

Comments were submitted that suggested that the regulation require the lender to submit a counterproposal when the borrower's initial plan was not acceptable and state the reasons for rejection of the initial plan. FCA does not agree that counterproposals should always be required. As explained in § 614.4440(c), the lender and borrower must work together until the lender has sufficient information to support a sound credit decision. Thus to the extent that a counterproposal would offer reasons for rejection of the initial plan and explains to the borrower the flaws in his initial plan, the regulation effectively serves this purpose, as required by §§ 614.4440(c) and 614.4512(a).

FCCA suggested that "under this section" be inserted in paragraph (b) following "has been sent" for purposes of clarity and that paragraph (c) be revised to track the statutory language in section 4.14A(d)(2) of the legislation. FCA disagrees with these suggestions. FCA believes that paragraph (b) is clear as drafted. Although paragraph (c) is not inconsistent with the statute, it cannot track the section in the statute word for word because to do so would not make sense in the context of § 614.4516. A few comments questioned what "nonaccrual" means. FCA refers these commenters to 12 CFR 621.2(a)(15).

#### *Section 614.4517 Restructuring decisions.*

Comments were submitted that expressed concern over the inequities created by requiring "good" borrowers to repay their loans on the same terms while other borrowers are entitled to repay under restructuring plans. On the other hand, some comments stated that lenders should give borrowers more opportunities to restructure loans. While some comments requested that FCA specify more restructuring procedures and guidelines for the lenders, the opposite view that FCA should not micromanage lenders as they need flexibility to reach sound business decisions was also expressed. Again, FCA has attempted to strike a balance between these concerns.

Comments were submitted requesting that the regulation be rewritten to better define the costs of restructuring and foreclosure, to provide better guidance to the lenders on how to calculate these costs and what formulas should be used by the lenders, and to provide all of this information including worksheets, calculations, assumptions and formulas, to the borrower in the early stages of the process (i.e., before a borrower applies for restructuring, or before a lender renders its determination). First, the cost of foreclosure is defined in § 614.4512(c), and § 614.4517 (a) and (c) addresses the cost of restructuring. FCA believes that these sections adequately define these terms and address the factors that are a part of these definitions. The terms and definitions are those commonly used in the agricultural credit sector. Second, as stated earlier, in §§ 614.4440(c), 614.4441(a), and 614.4512(c), no definitive cataloguing of assumptions, calculations, or formulas is possible, since the factors may very well differ in each situation. Thus, this information cannot be provided to the borrower at one of these earlier stages, because the specific information upon which the lender will base its decision will not be known until after each application is submitted.

#### *Section 614.4517(a) Consideration of application.*

Comments requested that terms such as "necessary and reasonable living and operating expenses" and "sound lending practices" be defined. One commenter questioned whether sound lending practices are intended to keep the farmer on the land and another commenter questioned whether they include actions based on the determination of whether the cost of restructuring is less than the cost of



foreclosure. FCA does not believe the regulation can define and provide a nationwide standard for terms such as "necessary and reasonable living and operating expenses" as they will differ depending on the location, borrower, circumstances, and other factors. Similarly, "sound lending practices" must be determined by examining each situation and the circumstances and factors surrounding each situation using general credit standards and safe and sound business practices.

Comments suggested that any subjective information concerning a borrower's skills, as discussed in § 614.4517(a) (3) and (4), that is used by the lender in its decision-making process should be made available to the borrower so that the borrower is able to rebut this information before the credit review committee. This information may include information obtained from members of the borrower's community. This issue is discussed in § 614.4518.

FCA believes that lenders must take into account a borrower's prior restructurings, if any, on the loan that is presently the subject of the restructuring application and the regulation has been revised accordingly. The borrower's payments on prior restructurings of the loan is an important factor that will help the lender assess whether the borrower is capable of working out existing financial difficulties. If lenders allow multiple restructurings regardless of past history on the same loan, then a borrower has the incentive to seek successive restructurings to eventually eliminate his obligations and borrowers who are meeting their loan obligations, including those involved in restructurings, will be unjustly required to pay for these additional costs to the System lenders.

#### *Section 614.4517(a)(1) Evaluation of cost of restructuring.*

Comments requested that FCA define "present value of interest and principal foregone", "preliminary restructuring plan", "reasonable and necessary administrative expenses", and "in a form acceptable to the institution." Another comment stated that the "administrative expenses" must be reasonable so that a lender cannot unjustifiably increase these costs, so that the cost of restructuring will most likely be greater than the cost of foreclosure. One comment suggested that in evaluating the cost of restructuring, an appraisal must contain correct information and apply to the specific property under consideration. Another commenter indicated that the

appraisal should be the lowest of any for which the borrower has paid.

One comment suggested that in evaluating its cost of restructuring, the lender should also consider the following: The cost of insurance for absentee ownership, ad valorem taxes, the loss of income from property, damage sustained by leaving property unoccupied, the decline in land prices caused by large institutional inventories, cost of marketing and advertising property for sale and the lender's overhead. One comment suggested that in evaluating the restructuring cost the lender should be required to offer the lowest interest rate to the borrower that it offers to its best customers and that 30-year loans should be available. FCCA suggested that in the first sentence of this paragraph, "a restructuring plan" be deleted and replaced with "restructuring a distressed loan" to conform to the language found in section 4.14 A(e)(2) of the statute. Finally, one commenter suggested that either the definition of cost of foreclosure found in § 614.4512(c) be placed in this section, or the evaluation of cost of restructuring found in paragraph (a)(1) of § 614.4517 be moved to § 614.4512.

FCA believes that the present value of interest income and principal foregone will vary based on the lender's interest rate, debt adjustment, and other factors. A "preliminary restructuring plan" is defined in §§ 614.4440(c) and 614.4512(a) as being part of an application for restructuring and FCA believes that no further definition is required. As stated earlier, "reasonable and necessary administrative expenses" will vary depending on the situation as will information that is "in a form acceptable to the institution." FCA agrees that a lender cannot unjustifiably increase the administrative costs to ensure that foreclosure will be less costly than restructuring. Thus, the regulation speaks of reasonable, as well as necessary costs. FCA agrees that the appraisal must contain correct information and be performed on the appropriate piece of property. No suggested changes to the proposed regulation were offered on this point, and FCA believes none are needed since the regulations adequately provide for this. FCA disagrees with the comment that the appraisal should be the lowest one. Where an appraisal is appropriate, section 4.14(d)(2) of the statute gives the borrower the opportunity to "select an appraiser." Thus, the borrower cannot continue to employ appraisers until he gets an appraisal that he likes.

Regarding the costs of restructuring, section 4.14A(e)(2) states that a lender

shall consider "all relevant factors" including a list of items that the statute provides. The items that the commenter named may or may not be relevant in every case. Thus, FCA is not willing to prescribe them in the regulation. However, to the extent that they are "relevant factors", they must be considered by the lender. In response to the comment that asserted that the lender should be required to offer the lowest interest rate to the borrower for a 30-year loan, FCA disagrees that it should dictate specific loan terms to a lender. These are business decisions that must be made by the lender, not FCA. FCA has changed the statutory language in the first sentence of the paragraph based on the suggestion by FCCA. This revision is important in order to differentiate between a preliminary restructuring plan and a restructuring application. FCA does not believe it is necessary to move the definition of "cost of foreclosure" or the cost factors of restructuring, since the definitions found in § 614.4512 are applicable to the entire subpart. However, FCA has transferred the factors to be considered when determining whether to restructure from paragraph (c) to paragraph (a)(1).

#### *Section 614.4517(b) Required restructuring.*

Comments stated that there is no incentive for lenders to restructure if the decision is based solely on cost. Another comment stated that if the cost of restructuring, must be less than the cost of foreclosure before a lender is required to restructure, the "middle" borrower will not have much of an opportunity to have his loan restructured. Section 4.14A(e)(1) of the statute specifically states when a lender is required to restructure and FCA cannot alter the statutory language.

One comment stated that "the least cost to the lender" should be defined and another comment suggested that it be defined using criteria prescribed by section 4.14A of the 1987 Act. FCA believes that the regulation already defines this term in accordance with the statute. Even though two or more alternatives are available to lenders, they will still have to consider the costs of those plans as prescribed by the regulation in paragraph (a) of 614.4517, which tracks the language of section 4.14A (d) and (e)(2) of the statute.

#### *Section 614.4518 Notice of denial of restructuring and right to review.*

There were a number of comments addressing a borrower's access to information upon which a lender's



denial of the restructuring application was based. All comments indicated that the borrower is entitled to information that factored into the lender's decision. However, there were differences of opinion as to how much information and the mechanism under which it should be provided.

Comments from individuals and farm groups requested that more information be provided to support and explain the reasons for the denial of the restructuring application. Comments from other groups and individuals also expressed concern that the regulations ensure that full documentation of the reasons for denial is made available to borrowers under a uniform procedure. One commenter suggested that the following language be added to paragraph (c): "including full documentation of the lender's calculations of the cost of restructuring and the cost of foreclosure." The comments advocated that the regulation should require that the lender provide specific reasons for the denial, including any actual calculations; assumptions used; documentation to explain why the cost of restructuring would be greater than the cost of foreclosure using formulas that considered specific suggested factors; all figures and formulas used, such as interest rates, administrative costs, and family living costs as assumed by the lender; in short all information relied on or used by the lender in reaching its decision. Comments stated that this information need only be provided when the application is denied.

It was asserted that without all of this information, a borrower cannot easily decide whether he would want to request a review before the credit review committee. Furthermore, comments stated that if a borrower decides to request a review, he cannot challenge the assumptions upon which the decision was made without such information. Farmer and borrower groups asserted that merely providing a contact person to provide such information, as the proposed regulation requires, is not sufficient. Since a borrower only has 7 days in which to request an appeal, this information should be provided in the notice to enable the borrower to review the information and decide within that 7-day period whether he wants to request a review. If a borrower has to contact an individual to obtain the information, it will leave little time of the 7 days that is left to examine the information and decide whether to request a review.

FCCA agrees with the position that FCA took in its preamble to the

proposed regulations. Namely, FCCA asserts that some of the critical assumptions and other relevant information used by the lender in making its decision could be helpful to a borrower in deciding whether to request a review. However, such information should not be routinely provided as part of the notice of denial. Rather, the notice should specify whom the borrower should contact to obtain such information and indicate that such information will be furnished upon written request. FCCA further comments that the regulations should also provide that upon the written request of a borrower whose restructuring application has been denied, the lender shall furnish, in writing, the critical assumptions and other relevant calculations or information, whether monetary or non-monetary, upon which the lender based its decision to deny restructuring. The regulations should also make clear that where the lender has based its denial on non-monetary consideration, the lender is only required to specify those considerations and furnish that information which played a material role in its decision. In further explaining this viewpoint, one lender asserted that an institution's decision not to restructure is not strictly quantifiable. Oftentimes it is based on "intangibles," such as the borrower's efforts to cooperate, his ability to produce, and the like. The lender also indicated that disclosure of information even as required by the proposed regulation would change the negotiation process between lender and borrower into "one of arbitrating outcomes—on one side hypothetical costs based on past and anticipated future experience, opinions, and strategies; on the other, opposing opinion motivated by the desire to achieve a more favorable financial outcome."

FCA has considered all viewpoints and balanced the borrower's right to a meaningful review before the credit review committee against a lender's right to negotiate with current and prospective borrowers. FCA notes that certain relevant information, in addition to the reasons for the lender's decision, should be provided to ensure that a borrower has the right to a meaningful credit review. Regarding what information should be provided, FCA does not believe that *all* information must be provided to the borrower. First, FCA realizes that some denials will be based on subjective judgment as opposed to quantifiable factors. Thus, some borrowers will be provided with figures and calculations, while others will be informed that they are not

capable of repaying the loan and provided quantifiable, as well as the nonquantifiable reasons for reaching such a conclusion. While FCA believes that a borrower is entitled to the reasons for the decision and the bases for those reasons to enable him to decide whether to appeal and so that the borrower is entitled to a meaningful review, FCA does not believe that a lender must disclose every piece of information and all of its calculations so that a lender will be unable to effectively negotiate with borrowers or compete with other financial institutions. Thus, FCA has required that critical assumptions and relevant information be provided. Enough information must be provided to ensure that a borrower understands the reasons for a lender's decision, to provide him a basis to decide whether to appeal and to provide him with a meaningful review process. Where a lender is bound by confidentiality restraints, it obviously cannot disclose this information. Thus, the regulation is revised to incorporate the above considerations.

Regarding the process for supplying information, this section will differ from § 614.4441 regarding adverse credit decisions. Unlike § 614.4441 which provides a borrower with 30 days in which to request a review, an applicant for restructuring only has 7 days. Thus, FCA believes that unlike § 614.4441, the lender must automatically provide the relevant information under this section, when denying a restructuring application to the applicant without first requiring that an applicant request such information. This will ensure that an applicant is able to decide within that 7-day period whether he wishes to request a review and will also give a borrower an opportunity to begin preparation for the credit review.

Additional comments were received concerning the contents of the notice. One commenter stated that the notice should be "clear" without specifying how the notice was vague. One commenter stated that the notice should include information on the documentation that a borrower can provide to the credit review committee. Other comments requested that the notice should include information on the appraisal, that the notice should include information on the appraisal only where additional collateral is required, that the notice should inform the borrower of any State mediation programs prior to the denial, that a separate form to request a credit review should be sent to the borrower, and that "7 days" should be in bold print and conspicuously placed in the notice.



FCA agrees with some of these suggestions. Notification is not intended to prescribe every right or every procedure available to the borrower. However, the notice requirements are intended to inform a borrower that certain rights to appeal the denial of a restructuring application are available to him as provided by the 1987 Act. For these reasons, FCA agrees that a borrower should be notified of his right to an appraisal when additional collateral is demanded by the lender in a restructuring context, but disagrees with the other proposed notifications. With the changes to the proposed regulation, FCA believes that the notification to borrowers is clear and that the notice requirements set forth in the regulation are adequate. In response to the comment that 7 days should be in bold print, FCA believes that the form of the notice is within the lender's discretion, but FCA suggests that the lender should give that prominence.

Comments were submitted concerning the manner in which the notice should be sent. Some commenters expressed the opinion that the notice should be sent by certified mail to all primary obligors and their attorneys and that the 7-day time limit in which a borrower must request an appeal be extended when the notice is sent to a "third party", such as an attorney. Also, other comments suggested that the 7-day period was too short, regardless of the recipient, and in any event the 7 days should start to run from the date that the notice is received. One comment said that the notice should be sent to the "proponent" of the restructuring plan.

FCA agrees that the notice sent pursuant to this section must be sent by certified mail or in any other manner that will allow for acknowledgment of receipt. Although FCA has not required this of the notices discussed above, since a borrower only has 7 days from receipt in which to request a review of a denial of a restructuring application, FCA believes that it is appropriate to require a lender to use certified mail or other appropriate means to ensure that a borrower is timely notified in order to exercise his rights if he chooses. FCA believes that timely notification is particularly important in this instance, since the 7-day period is much shorter than the 30-day period. In response to those comments that stated that the 7-day period in which to request a review was too short, the statute prescribes this time limit, and the regulation conforms with the statutory requirement. FCA does not believe that the regulation needs to be revised to state that the 7-day period begins from receipt since

paragraph (c) of § 614.4518 makes this clear. In response to the comment that the notice should be sent to the "proponent" of the plan, FCA believes that the notice requirement may be fulfilled by sending the notice to a primary obligor. However, lenders should attempt to send the notice to the primary obligor with whom the lender has been dealing in regard to the restructuring application.

One comment stated that the lender should be given a deadline in which to reach its decision since the borrower for all intents and purposes, has 45 days in which to apply for restructuring and one comment suggested that the following language be added to the end of paragraph (c) to give a borrower adequate time in which to prepare for a credit review before the committee: "and the borrower, upon request, shall be allowed up to 30 days in which to prepare for such review."

The time in which it takes to make a determination will vary depending on such factors as the complexity of the particular restructuring plan and the number of restructuring applications at the institution. Therefore, FCA does not believe that the lender should be instructed to reach a decision within a prescribed period of time. Furthermore, there is no incentive for a lender to delay making its decision, since it is not in a lender's best interest to allow a distressed loan to remain on its books for a long period of time without some form of corrective action. Similarly, FCA does not believe that it should prescribe a time limit in which the borrower has to prepare for the review. As discussed in § 614.4442(d), a reasonable time period must be allowed. However, FCA does not believe it is appropriate to prescribe a fixed time period in which to prepare for the review since the preparation time that is needed will depend on the complexity of the reasons for denial, supporting information, and other factors.

*Section 614.4519 Notice before foreclosure; limitation on foreclosure and Section 614.4519(a) Notice requirements.*

Comments were submitted requesting that more information be included in the notice. One comment stated that the lender should be required to explain the procedural steps taken before and after restructuring applications are considered. One comment suggested that the borrower be notified of his right to an appraisal. Another comment requested that the notice should clearly state that foreclosure is being contemplated and that the lender should be required to notify the borrower of the

timeframes involved. The notice is intended to be a notification that foreclosure may be imminent, and that the borrower has the right to submit a restructuring application. It is not intended to be an extensive explanation of the process. For these reasons, FCA disagrees with the suggestions that the notice include the procedural steps, timeliness, and the right to an appraisal. However, FCA agrees that the notice should inform borrowers that foreclosure may be imminent and this section as well as § 614.4516(a) have been revised accordingly.

*Section 614.4519(b) Limitation of foreclosure.*

There were a number of comments requesting that FCA place more limits on a lender's ability to foreclose. One comment stated that the regulation should clarify that foreclosure may not be initiated until a lender has completed any consideration of a restructuring application, including a review by the credit review committee. Comments suggested that foreclosure not be permitted until all restructuring attempts and processes are exhausted, including a decision by the SAC, a review by the National Council, and an appeal to the FCA for a directive. One comment suggested that a lender not be allowed to begin foreclosure proceedings until 45 days after its decision on a restructuring application. Other comments suggested that no foreclosure be initiated until after 45 days has passed during which a borrower has not responded, and notice of loan acceleration has been sent to a borrower providing an additional 30 days in which to pay. One comment asserted that the regulation is broader than the statute in that it allowed more foreclosures than the statute did. Unfortunately, this commenter did not specify how he interpreted the regulation to be broader. FCCA found it to be narrower in that FCCA alleged that the regulation limits the lender's ability to foreclose in certain situations (i.e., during consideration by a credit review committee).

FCA agrees that foreclosure may not be initiated during the credit review process. In response to FCCA's comment, the regulation does prohibit the lender from initiating, continuing or completing a foreclosure proceeding pending the completion of the credit review committee process. FCA believes that without this provision, the credit review committee process would be meaningless and borrowers would be deprived of their right to a fair review. On the other hand, even though a lender must wait until the committee process is



complete, since the committee must render its decision in as expeditious a manner as possible, FCA does not believe that lenders are deprived of their right to a timely foreclosure where appropriate. Foreclosure may be initiated after the credit review process, but must be halted if a SAG requires restructuring. Thus, a lender will have the incentive to begin foreclosure only when it believes it is on very firm ground regarding its decision to foreclose. The borrower is not prejudiced in any way as long as foreclosure does not occur until after the credit review committee has completed its consideration. Thus FCA has balanced both the interests of a borrower to a meaningful credit review and the interests of a lender to timely foreclosure in determining this approach.

The last sentence in this paragraph has been revised to conform to the statutory language found in § 4.14A(j) to provide the lender with the opportunity to take action where it has reasonable grounds to believe that loan collateral may be destroyed.

*Section 614.4519(c) Limitation on foreclosure—special asset group determination.*

One comment suggested that the following language be inserted into § 614.4519(c): "No foreclosure proceedings may begin until all possible appeals and restructuring actions have been completed." As discussed in the immediately preceding paragraph, the regulation balances both the borrower's rights and those of the lender. Therefore, FCA does not agree that this section should be revised as suggested.

Another comment questioned what would happen if a SAG decided that a loan should be restructured, but the decision had previously been made by a lender not to restructure and foreclosure was already complete. FCA does not expect this situation will exist. A certified lender's SAG is to review only those determinations where a restructuring plan has been denied. Thus, unlike the credit review committee, the SAGs are established for a more limited purpose and they should be able to better perform timely reviews. Furthermore, the usual foreclosure process is a lengthy one. Thus, in the time that it takes a lender to complete this process, SAGs should be able to perform their reviews in a timely fashion.

*Section 614.4520 Review of restructurings for certified institutions: reporting.*

Comments suggested a borrower should be able to submit information to the SAG and the National Special Asset Council (National Council) and that their determinations should be disclosed and made available to borrowers and other interested parties. Comments also suggested that procedures for the SAG and National Council should be set forth in the regulations. FCA does not believe that the regulations should require that borrowers or third parties have direct access to the SAGs or the National Council since the statute does not provide for this. Furthermore, FCA does not agree that it should prescribe procedures for the Council and the SAGs. The procedures are more appropriately established by the SAGs and the National Council. Also, the Farm Credit System Assistance Board, and not FCA regulates the National Council.

One comment stated that the SAGs should review all denials of restructuring applications. Another comment questioned whether an institution in receivership would be able to work with the former institution's board of directors to establish a SAG. Finally, FCCA commented that § 614.4520(g) should refer to § 614.4517(a) to conform to the statutory language and to clarify the factors that these entities are to consider when reviewing decisions.

Paragraph (b) of § 614.4520 already requires the SAGs to review all restructuring denials. In response to the comment on receiverships, as has been previously stated in this preamble, FCA will make these determinations applicable to each individual receivership when or after a receivership is established. As FCCA indicated, the regulation will refer to paragraph (a) of § 614.4517.

*Section 614.4521 Participation in state agricultural loan mediation programs.*

Comments were submitted on the effect, if any, that mediation should have on the foreclosure process. Comments suggested that borrowers who request mediation should be allowed to participate before they participate in the restructuring process. Other comments stated that mediation should occur during the preliminary restructuring phase, before the 45-day period referenced in § 614.4519 begins, and during the 45-day period. Additional comments expressed the view that foreclosure proceedings should be stayed any time mediation is initiated.

On the other hand, one comment stated that mediation is no longer appropriate after a lender has rendered a final decision on foreclosure.

FCA has specified that mediation may occur either concurrently with loan restructuring or at any other appropriate time. As long as lenders participate in those mediation programs certified under section 501 of the 1987 Act so that borrowers are able to take full advantage of their mediation rights, FCA does not believe it is appropriate for the regulations to further restrict a lender's foreclosure rights by requiring that the foreclosure process be stayed or not initiated during mediation, as long as State law does not dictate otherwise.

Other comments focused on the lender's participation in mediation. One comment suggested that in mandatory mediation States, institutions should initiate the mediation process. Another comment suggested that institutions be required to participate in good faith regardless of who initiates the mediation. One comment suggested that in voluntary mediation States, an institution should be required to participate even if another lender, not the borrower, requests mediation. Finally, one citizens' group advocated that the FCA establish a policy that would require all System institutions to participate in State mediation programs. If a mediation program permits a lender to initiate mediation, it may do so as determined by the lender's own discretion. However, FCA believes that participation in State mediation programs, other than those specified in section 503(b) of the 1987 Act, is governed by the applicable State law. Even those certified programs will vary by State. Thus, FCA has declined to set further requirements for institutions' participation. Regarding the comment suggesting that the lender participate in mediation when initiated by a third party, although FCA has not prescribed this participation in the regulations, lenders may want to consider such participation to protect their interests especially when the lender is not a first lien holder.

Comments suggested that the institutions notify borrowers of their rights under mediation and in this notification provide timeframes so that a borrower will be able to take advantage of mediation before any determination on a restructuring application is final. One comment suggested that all notices sent out under the borrower rights regulations should inform borrowers of the applicable mediation rights and that the regulations should outline the necessary requirements or credentials



for a mediator. Another comment stated that FCA should specify processes for mediation. FCA does not believe that the notices of disclosure, loan or restructuring application, or first refusal rights prescribed by these borrower rights provisions are the appropriate vehicle to notify borrowers of their mediation rights. Nor does FCA believe that its regulations should require institutions to notify borrowers of their mediation rights since some locations may not have mediation available to borrowers, and those that do will vary greatly. The appropriate vehicle for the suggested notification may very well exist in the mediation programs themselves. Furthermore, FCA believes that any integration between the mediation process and the borrower rights processes is better left to the institutions themselves, as may be prescribed by any State mediation program or State law.

Comments suggested that the FCA explain the requirements for certification under section 503(b) of the 1987 Act. FCCA indicated that the final regulation should refer to section 501 of the 1987 Act, instead of section 503(b) as the proposed regulation does. FCCA suggested that "consideration" be inserted before "loan restructuring" for clarity and that "under the same terms and conditions applicable to agricultural creditors generally" be inserted immediately following the reference to the 1987 Act to conform to FmHA's proposed regulations. FCCA also recommended that "To the extent permitted by Part 618, Subpart G, of these regulations" be inserted at the beginning of the paragraph (b) to remove any potential conflict.

In response to the comment requesting that the requirements of certification be contained in the notice, FCA believes that the borrowers rights regulations are not the appropriate place to expound on the requirements for certification. FCA refers this commenter to section 501 of the 1987 Act, codified at 7 U.S.C. 5101 which addresses this issue. FCA concurs with FCCA's suggestion that section 501, as opposed to section 503(b) is the appropriate citation, and the regulation will be revised accordingly. FCA agrees that inserting "consideration of" would clarify the regulation and the final regulation will be revised accordingly. However, FCA declines to make the other two changes suggested by the FCCA. FCA is not convinced that terms and conditions applicable to other agricultural creditors should also be applicable to the System institutions. Regarding a potential conflict with Subpart G of Part 618, FCA has

addressed this issue in Subpart G by requiring that institutions provide such information, with the borrower's permission, to comply with paragraph (b) and the requirements of section 503 of the 1987 Act.

#### *Section 614.4522 Right of first refusal.*

In general, comments were submitted by borrowers groups and individuals indicating that FCA should grant more rights to previous owners to help ensure that an individual can remain on his land. On the other hand, comments were received from lenders, as well as borrowers expressing concern over the costs and harm to the System created by the rights of first refusal. FCA has balanced these interests in drafting the regulation.

There were a number of comments focusing on the public auction paragraph of the regulation and its interaction with the remainder of the paragraphs in the regulation. Specifically, many commenters expressed divergent views on whether the Act prohibits a System institution from selling or leasing acquired property through a public auction pursuant to paragraph (e), without first providing first refusal rights under paragraph (c) or (d). Many individuals and farmer groups expressed the view that the regulation should not allow for a public auction as set forth in paragraph (e), unless the institution has first gone through the first refusal process in a private sale or lease as prescribed by paragraph (c) or (d). The reasons for this view were many. One commenter stated that since there is no "notice period" provided in paragraph (e) which would allow a previous owner to arrange for financing, Congress must have intended an institution to first follow the steps in paragraphs (c) and (d) which do have such a "notice period." Other commenters stated that Congressional intent dictates this position. It was further asserted that Congress intended to provide first refusal rights to previous owners and that providing the previous owner with notice and opportunity to bid at public auction and requiring an institution to accept the bid of the previous owner if it is a qualified bid that matches the highest offer should not be considered to be a "right of first refusal." Finally, some commenters proposed that FCA should follow the recent district court decisions, both of which are on appeal, in *Leckband v. Naylor*, Civ. No. 3-88-167, (D. Minn., May 17, 1988); and *Martinson v. Federal Land Bank of St. Paul*, Civ. No., A2-88-31 (D.N.D., April 21, 1988), which held that based on the legislative history, System institutions improperly used the public auction process because

they did not first afford previous owners their rights of first refusal as prescribed by either paragraph (c) or (d).

Some farmers and other individual commenters agreed with the approach that the FCA took in the proposed regulation for various reasons. One commenter stated that by providing otherwise and following the *Leckband* approach, FCA would be eliminating opportunities for viable parties to buy property. Also, this commenter expressed concern over the excessive costs to the System if institutions are not allowed to sell land through public auction. Some commenters stated that by allowing the previous owner "two bites of the apple", the price of agricultural real estate will be deflated. One lender discussed several instances where property was purchased by a previous owner pursuant to paragraph (c), and then immediately resold at a higher price. The lender asserted that these "flip sales" do not keep the previous owner on the land, as was the intent of Congress. In addition, the commenter asserted that the institutions have already spent their resources, both in time and money finding potential buyers. These "flip sales" negate the competitive bidding process which if operated freely would help to strengthen agricultural land values. One legal aid group expressed a preference for public auctions because they are supervised by sheriff's offices. Thus, an institution is less able to violate the borrower rights provisions. One commenter complained that by affording multiple and subsequent first refusal rights, third party purchasers will suffer.

FCCA states that nothing in the legislative history or the actual language of the 1987 Act requires that a private sale be held prior to a public auction. Congress only intended that the previous owner be given a reasonable opportunity to repurchase the property before it is sold to a third party. This can be accomplished by either the private sale provision or the public auction provision. FCCA asserts that paragraph (a) sets forth the *general* rule that acquired property is subject to the right of first refusal. Paragraphs (b) through (d) set forth procedures to implement the general rule in various situations. FCCA further asserts that the legislative debate, particularly in the Senate Subcommittee on Agricultural Credit of the Senate Committee on Agriculture, Nutrition, and Forestry that authored the language on first refusal rights eventually adopted by Congress, confirms that Congress intended to create two independent, not sequential, rights of first refusal.



FCA believes that the language in the proposed regulation correctly reflects the intent of the Act. There are three rights of first refusal available, as stated in paragraphs (c), (d) and (e). Nothing in the legislative history persuades FCA that these rights must be provided sequentially. The relevant language originated in the Senate, where it was stated that "the former owner be given one opportunity to lease back or buy back his property." The previous owner is not prejudiced as long as he is afforded his right of first refusal either in the public auction process or by private sale or lease. In both instances, the previous owner is given priority by the institution. However, the System would be prejudiced if an institution is required to provide these rights subsequent to each other. An institution should be afforded the right to sell land publicly or privately in order to get the best price in its judgment, depending on market conditions. To deprive an institution of this right will harm not only the lender, but the entire System and prices of agricultural real estate as well. FCA is mindful of the district court decisions, both of which are on appeal. FCA will monitor the litigation closely and will, if appropriate, reconsider its position at a later time.

Comments suggested that all decisions and denials under this section be appealable. One comment stated that the borrower should have an opportunity to submit evidence rebutting a lender's decision that the borrower did not have resources available to conduct a successful farming or ranching operation, or that the borrower cannot meet all of the payments, terms and conditions of a lease, pursuant to paragraph (d)(2). One comment criticized the regulation for allowing these determinations to be made by the lender. Other individuals suggested that an independent appraisal be permitted. Comments also advocated that the lender disclose the purchase agreement to the borrower so that the borrower is assured that the lender is in compliance with the regulation and statute. One comment requested that all decisions, reasons to reject or deny a right of first refusal, and a borrower's waiver of his rights be in writing.

The suggestions for appeal rights, an opportunity to submit evidence, independent appraisals, written determinations on every decision, and disclosures would provide for a process similar to the credit review committee process. However, the statute does not provide for the credit committee process to review these denials. Instead it provides for first refusal rights in certain

situations to certain previous owners who, as determined by the lender (see section 4.36 (a) and (c)(3)), are eligible for these rights.

There were a number of comments advocating that FCA create procedures for the first refusal rights. A farm group suggested that the property must be in the lender's inventory a minimum amount of time before it is sold or leased to other than the previous owner unless the previous owner has waived all his rights. Another comment stated that the regulation should prescribe a definite time period in which a lender must elect to sell the property. A comment from four State attorneys general advocated that the legislative history indicates that the regulations should implement a "homestead protection," i.e., if an institution holds property for an interim period, the institution should offer to lease the residence and other buildings necessary for family maintenance to the previous owner at fair market value; and if an institution decides to separate the residence from other property for sale or lease, the institution should offer to sell or lease the residence to the previous owner at fair market value. One commenter urged that the regulations require System institutions and State attorneys general to issue a statement on the interaction of State and Federal rights.

FCA does not believe that the regulations should require that the acquired property be in the lender's inventory for a period of time before sale or that the lender must decide to sell within a prescribed period of time. With restructuring, mediation, and other rights available to borrowers, foreclosure may be a very lengthy process. Additional time is required to implement either public or private disposition under § 4.36 of the Act, which adds to the length of the foreclosure process. During this time, the loan is not accruing interest, and FCA does not believe that further time delays should be imposed on a lender. In response to the comment on "homestead protection" (as that term is used by the commenters), although institutions may make such offers to the previous owners under the regulations, FCA does not believe that the regulations should require such a protection. First, FCA must assume that if Congress had intended for such a protection to exist, the Act would have so provided. Second, FCA will not dictate such offers be made by an institution. This is a business decision to be made by the lender, not FCA, as an arm's length regulator. Regarding the comment

suggesting that a joint policy statement on State and Federal rights be required, FCA believes that the interaction between State and Federal law is a matter for the courts to decide. Thus, FCA has not adopted this suggestion.

Comments were submitted advocating further restraints on the lender's ability to sell the property and further setting restrictions as to which offer a lender may accept. Comments suggested that the method of financing should be considered to be a term or condition of the sale, thus, advocating that the lender should not be permitted to offer below market or preferential rates to a potential third party purchaser unless the lender is willing to offer the same terms to the previous owner. One comment suggested that the lender finance the previous owner if he can meet some terms and conditions as the lender would require of a third party purchaser. A member of Congress commented that some previous owners are apparently being informed that they must exercise their rights of first refusal through a cash purchase. The Congressman suggested that instead of adopting such a policy, lenders should decide on a case-by-case basis whether they will offer financing. This commenter also stated that some previous owners are being informed that if they are not able to obtain financing, any further rights under § 4.37 that they may have are null and void. The member of Congress suggested that these statements be corrected by clarifying the regulations on these issues.

In response to the comments advocating that lenders should finance or consider financing previous owners, the statute specifically states that "financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate." Thus, the decision to finance a previous owner is wholly within the lender's discretion. In response to the Congressman's comment concerning any further rights such as those set forth in § 4.36(b)(5), FCA does not believe the regulations need to be revised on this point because they do not make these other provisions found in § 4.36, dependent on whether a borrower can finance his purchase.

Many suggestions were offered, which, if complied with, would alter the first refusal rights as prescribed by statute. A farm counseling group suggested that if an institution receives a bid during a public auction that is below the appraised value of the property, the previous owner should be made aware of the bid and given 30



days in which to match or exceed the bid. One comment suggested that a previous owner have an exclusive right to purchase the property for 15 days, and that after this time period, the offer should remain open until a new appraisal is performed (thus raising the mandatory acceptance price) or until the institution has entered into a sales contract with a third party. FCA declines to revise the regulation as suggested above because to do so would alter the essence of the first refusal rights as prescribed by Congress.

Other changes to the statute were suggested. One commenter suggested that the 15-day time periods be extended because of inefficient postal service. One comment stated that the regulation should specify 15 business days, instead of 15 days and that this period should be from receipt of the notice. Another commenter stated that the notices must be made clearer than those prescribed by the regulations. A lender suggested that the regulations should state that these rights cannot be sold, assigned or otherwise transferred by the previous owner. The FCCA suggested that "previous owner" be further defined to ensure that the previous owner is the record owner of the real estate. FCCA asserted that the failure to do so may result in a borrower with no ownership interest in the acquired property seeking to exercise the rights of first refusal and this would be contrary to the intent of the Act.

The statute describes specific time periods, either 15 or 30 days, depending on the actions involved, and FCA does not agree that the regulations should be revised to contradict the Congressional intent which is evidenced by the clear statutory language. Regarding the comment requesting that business days be prescribed, if Congress meant business days, as opposed to days, FCA must assume that the legislation would have been written accordingly. This commenter also requested that FCA prescribe 15 days from receipt of the notice. However, the regulation, where applicable, requires this. In response to the comment that stated that the notice was unclear, FCA disagrees and believes that the contents of all notices are clearly spelled out in the regulation. In response to the lender's comment that the regulations should specify that the rights cannot be transferred, FCA does not believe it is necessary to revise the regulations. They clearly state that these rights are applicable only to previous owners. Institutions need not afford these rights to any other individuals. In response to FCCA's comment on the definition of "previous owner," FCA

agrees that the Congressional intent is to keep the record owner on the land, who in all cases may not be the borrower. For example, there may be instances where parents have pledged their land as collateral for their son's loan. Even though the parents are not borrowers, FCA believes that they should have first refusal rights. Thus, FCA agrees and has changed the definition of previous owner in the regulation.

Changes were suggested based on the technical amendments bill, H.R. 3980. For example, one individual suggested that the time periods be changed to conform to H.R. 3980. FCCA suggested that "former borrower" in paragraph (f) be changed to "previous owner." As stated previously, since the technical amendments bill has passed, FCA has changed the regulations to conform to the statute.

Comments were submitted on the requirement in paragraph (b) that the lender determine and document whether the previous owner had the financial resources to avoid foreclosure before granting any first refusal rights. Commenters advocated that even if borrowers had the financial resources to avoid foreclosure, they should still be allowed to exercise first refusal rights. FCCA suggested that "loan foreclosure or" be deleted from paragraph (b), thus deleting the requirement that institutions must document that a borrower did not have the ability to avoid foreclosure. FCCA asserts that the discussion in the Senate subcommittee mark-up which led to insertion of this requirement in paragraph (b) makes clear that the potential abuse which Congress sought to avoid was limited to voluntary conveyances by borrowers who might otherwise take advantage of the first refusal rights by deeding over their mortgaged property, the value of which is then considerably less than the debt against it, and repurchasing such property clear of any encumbrances. FCCA further advocated that institutions should not be required to determine whether the borrower had the financial resources to avoid foreclosure, as long as the institution routinely offers the previous owner his rights of first refusal in all cases where title is acquired by voluntary conveyance.

FCA disagrees with these comments. The law clearly states that agricultural real estate is subject to rights of first refusal, *only if* the borrower did not have the resources to avoid foreclosure. This requirement is in the statute and in the regulation to prohibit the type of transactions described by the FCCA and discussed by Congress. Furthermore,

FCA believes that institutions should be required to make and document these determinations. In response to FCCA's comment that institutions need not make this determination in loan foreclosure cases, FCA asserts that if the borrower has gone through the restructuring, credit review committee and foreclosure processes, institutions already would have made this determination. Thus, there is no burden on the institution in requiring such documentation, and such documentation may avoid potential abuses of the statute. FCA further disagrees that institutions need not make these determinations in a voluntary conveyance situation. It is even more important that these determinations be made when there has been a voluntary conveyance to avoid the potential abuses discussed by FCCA.

FCCA also suggested that "to purchase the property" be inserted after "offer" in the last sentence of paragraph (c)(1) and that "to lease the property" be inserted after "offer" in the last sentence of paragraph (d)(1) for clarity. FCCA commented that banks for cooperatives were not intended to be included in the regulation and to correct this error FCCA suggested that "(except a bank for cooperatives)" be inserted immediately following "institution of the System" in paragraph (a)(1). FCCA as well as individual commenters suggested that "or any portion of such real estate" be inserted in the first sentence of paragraph (c) to conform to the statute. Finally, FCCA commented that for clarity "acquired real estate" be replaced with "acquired property" in paragraph (c)(4) and that in paragraph (d)(2) "rental" be inserted after the word "appraised."

FCA does not agree that the terms "to purchase the property" and "to lease the property" are necessary for clarity. FCA agrees that the regulation must be revised to exclude banks for cooperatives and a definition will be included that exempts banks for cooperatives. FCA agrees with the remainder of the proposed changes and the regulation has been revised accordingly. Also, since the institution is the record owner of acquired property, the definition of previous owner has been changed to clarify that the previous owner was the prior record owner before the institution became the present record owner.

One comment suggested that a definition of "accredited appraiser" be included in the regulation. Another comment suggested a certain approach for appraisers to follow. Finally, a legal aid organization questioned whether



after a right of first refusal is exercised, a lender could foreclose again. No changes to the regulation based on these proposals will be made at this time. Regulations addressing appraisals will be published in a separate Federal Register document on eligibility and lending authorities. In response to the question concerning whether more than one foreclosure is possible after rights of first refusal have been exercised, as long as foreclosure is otherwise appropriate, FCA knows of no reason to prohibit such foreclosures.

#### PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

##### Subpart J—Prescription, Subscription and Retirement of Stock

Since paragraphs (e) through (g) of proposed § 615.5255 relate to retirement of stock only in the context of restructuring, and not in the context of default, the paragraphs will become a separate section which will be renumbered and retitled. Comments suggested that borrowers be allowed to retire stock against outstanding principal regardless of whether principal is reduced. FCA assumes that this comment refers to retirement of eligible borrower stock. This will be addressed in a separate Federal Register document on capital adequacy-related regulations. The references to Federal land banks in the proposed regulation have been replaced with farm credit banks in the final regulation and a reference to ACAs or merged associations has been inserted.

#### PART 618—GENERAL PROVISIONS

##### Subpart G—Releasing Information—General Comments

In general, one comment suggested that Congress should have access to all documents. Another comment asserted that FCA should specify procedures for disclosure of information and the release of stockholder lists, including to whom a borrower should make his request. One farm group stated that there should be a Systemwide policy on what information is to be released. Some comments suggested that all information used in a lender's decision-making process should be disclosed.

FCA does not believe that the regulations should address Congressional access to such documents since Congressional requests are made pursuant to separate authority. FCA does not agree that the regulations should prescribe procedures since System institutions are better able to establish these procedures. The

suggestion for a Systemwide policy is unnecessary, as the regulations already specify what information is to be released to whom. In response to those comments requesting all information used during a lender's decision-making process be provided, FCA assumes these comments refer to determinations on restructuring applications. This issue was addressed earlier in § 614.4518.

##### Section 618.8310 Lists of borrowers and stockholders.

One comment suggested that the regulations should refer to the provisions of § 4.12A(b) on alternative communications. The regulations already implement these provisions in § 618.8310(b)(2). One comment stated that the following should be inserted at the end of the second sentence in § 618.8310(b)(3): "the compliance with applicable law, and efforts on behalf of borrowers and stockholders to change laws affecting the banks and associations." FCA does not agree that the above-referenced language should be examples of "permissible purpose." Regarding "compliance with applicable law," FCA is responsible for examining an institution's compliance with laws. Regarding the remainder of the proposed language, FCA believes that this language may encourage efforts to communicate on "social" and "political" causes, or "personal grievances", which are prohibited by the third sentence of § 618.8310(b)(3).

##### Section 618.8320 Data regarding borrowers and loan applicants.

One commenter suggested that a borrower should be notified that information on his loan has been submitted to a SAG. FCA is not aware of the purpose which such a communication would serve. Thus, FCA does not believe that the regulation should be changed accordingly. In response, to FCCA's comment under § 614.4521 to request that language be inserted in that section to prohibit disclosure of information to mediators where such disclosure would conflict with this subpart, FCA believes that as long as a borrower does not object, his loan information must be provided to the mediator pursuant to section 503 of the 1987 Act, which requires cooperation with requests for information from mediators. The regulation has been revised to address this issue.

##### Section 618.8325 Disclosure of loan documents.

One comment suggested that paragraph (a)(1) be revised to further define "borrower" as "any signatory who has a valid right of first refusal

under § 614.4522." Another comment suggested that paragraph (b) should not be changed to include appraisals because appraisals should be public not privileged information. On the other hand, FCCA stated that the confidential nature of certain information used in an application process must be protected. FCCA suggested that the following language be inserted following the second sentence in paragraph (b): "To the extent that any appraisal may contain confidential information relating to or identifying third parties, information received by the appraiser, lender or lender's agent under a pledge of nondisclosure, or other information of a confidential nature, the lender shall take any action necessary and appropriate to preserve the confidentiality of such information before providing the appraisal to the borrower."

FCA does not believe that the definition of "borrower" needs to be expanded. To the extent that a previous owner is also a borrower, he will have access to his loan documents. To expand the definition may give previous owners access to documents to which they should not otherwise be entitled. Regarding the issue on appraisals, to the extent that § 618.8320 affords some protection to appraisals as confidential documents, that section is for the benefit of the borrower, and FCA does not believe that § 618.8320 should be changed. Regarding FCCA's concerns, FCA agrees that there are valid concerns in protecting confidential third party information. However, FCA does not believe that institutions should be able to indiscriminately withhold any such information. To do so would effectively deny a borrower his right of access to the appraisal. Thus, FCA has inserted language to protect only identifying characteristics of third parties or their properties where such information is confidential. Although the lender must disclose information in a borrower's appraisal relating to third parties, where that information is confidential, the institution may withhold specific characteristics that would identify the third party or his property.

A farm group suggested that any document relating to the loan should be made available to the borrower. A member of Congress commented that borrowers are not being given access to all applications in violation of the law. Another commenter complained that documents are not being provided "as soon as practical." Comments were received suggesting that borrowers should receive copies of all documents



when they are signed so that no unauthorized changes can be made by the lender. One commenter questioned whether all signatories are entitled to receive copies.

In response to the comment requesting disclosure of any document relating to the loan, FCA does not agree, and believes that disclosure should be limited to documents signed or produced by the borrower. To expand this definition may require lenders to disclose other business, confidential information. In response to those complaints concerning lenders' compliance, the regulations clearly require compliance with the statutory requirement and no change need be made to the regulation. In response to the comment regarding timely disclosure, the regulation prescribes that the documents shall be provided at loan execution. FCA will continue to monitor and examine for timely compliance with statutory and regulatory requirements. In response to the question whether all signatories are entitled to receive copies, as long as they are "borrowers" as defined in this section, they are entitled to receive copies.

#### List of Subjects in 12 CFR Parts 614, 615, and 618

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas, Accounting, Government securities, Investments, Archives and records, Insurance, Technical assistance.

For the reasons stated in the preamble, Parts 614, 615, and 618 of Chapter VI of Title 12 of the Code of Federal Regulations are amended as follows:

#### PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: Secs. 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 4.37, 5.9, 5.17(a)(10); 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Subparts K and L, consisting of §§ 614.4365 through 614.4368 and 614.4440 through 614.4444 are revised to read as follows:

#### Subpart K—Disclosure of Loan Information

Sec.

614.4365 Applicability.  
614.4366 Definitions.  
614.4367 Required disclosures—in general.  
614.4368 Disclosure of differential interest rates.

#### Subpart K—Disclosure of Loan Information

##### § 614.4365 Applicability.

This subpart applies only to loans from qualified lenders if the loans are not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

##### § 614.4366 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a qualified lender. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time, adjusted to take into consideration the amount of any stock or participation certificates which the borrower must purchase pursuant to bylaw, policy or regulation in order to obtain the loan, and any loan origination charges.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated contract rate of interest applicable to the loan at a point in time, excluding any charges payable by the borrower in obtaining the loan.

(e) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) "Loan origination charges" mean initial one-time transaction charges or fees, which may or may not be computed as a percentage of the transaction amount, and which are imposed on a borrower by a qualified lender to obtain a loan, but do not include charges imposed by someone other than the lender for services that are not required by the lender.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in § 1.7(b)(1)(B) of the Act but only with respect to loans discounted or

pledged under section § 1.7(b)(1) of the Act.

(h) "Standard adjustments factors" means those financial elements, including but not limited to, a qualified lender's cost of funds, operating expenses, provision for loan losses, and changes in retained earnings, which are typically taken into consideration by a qualified lender in adjusting the interest rate on loans.

##### § 614.4367 Required disclosures—in general.

(a) Each qualified lender shall furnish the following information in writing to a prospective borrower not later than the time of the loan closing:

(1) The current rate of interest on the loan;

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan;

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership and applicable loan origination charges on the current interest rate computed on an annualized basis;

(4) Except with respect to eligible borrower stock under section 4.9A of the Act, a statement indicating that stock that is purchased is at risk;

(5) A statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrower's rights that apply to each type of loan.

(b) For loans that will or may be pooled for sale on the secondary market created under section 8.9 of the Act, in addition to the loan disclosure in paragraph (a) of this section, at the time of application for a loan, a qualified lender shall provide the following:

(1) Notification that the loan will or may be pooled;

(2) Notification that, if the loan will be pooled, the borrower will be required to execute, within 3 days of commitment, a waiver of his right to have the loan considered for restructuring under Title IV of the Act and 12 CFR Part 614, with a statement that rights, if any, under applicable State laws are not waived; the notification shall state that the rights



prescribed by sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D and 4.36 will not apply if the loan is pooled;

(3) Notification that the borrower has the right not to have his loan pooled;

(4) Notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to his loan; and

(5) Notification of any other terms and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(c) Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan, including the effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each qualified lender that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(e) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (d) of this section will be satisfied by providing the disclosure to any one of such parties.

#### Appendix to 12 CFR 614.4367—Required Disclosure Model Disclosure Forms

##### General

The following are model disclosure forms which qualified lenders may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give qualified lenders an idea of the type and extent of information that should be contained therein. Qualified lenders are not required to follow the format of the sample forms. Qualified lenders may develop and use other forms provided the statements contain comparable disclosures in clear,

understandable English and otherwise meet the requirements of the Act and regulations.

##### Form 1

This loan is *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

##### INTEREST RATE DISCLOSURE

Date: \_\_\_\_\_  
Lender: \_\_\_\_\_

(Name)

##### STATED INTEREST RATE

The rate of interest currently applicable to your loan

(Percentage)

Borrower: \_\_\_\_\_  
(Name)

##### EFFECTIVE INTEREST RATE <sup>1</sup>

The stated rate of interest adjusted to take into account loan origination charges and purchase of stock

(Percentage)

Check Applicable Box

☐ This is a **FIXED RATE LOAN**—the stated rate of interest is not subject to change during the life of the loan.

☐ This is an **ADJUSTABLE RATE LOAN**—the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan—

The interest rate on the loan may be changed (Period).

The interest rate may be changed a maximum  $\pm$  (Percentage). You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate.

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (list the factors).

The Standard Adjustment Factors may ☐ or may not ☐ be changed during the life of the loan.

Except with respect to eligible borrower stock under section 4.9A of the Farm Credit Act of 1971, stock that is purchased in this institution is at risk.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (Telephone Number).

##### Form 2

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

<sup>1</sup> This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment. For example, if the amount of stock or participation certificates held is increased to —, the effective interest rate will be —.

##### DISCLOSURE OF A CHANGE IN THE EFFECTIVE INTEREST RATE

Date: \_\_\_\_\_

Lender: \_\_\_\_\_

(Name)

Borrower: \_\_\_\_\_

(Name)

This is to inform you that on (loan and loan number),

☐ The effective rate of interest will be adjusted effective (Date).

The effective rate of interest on your loan is changed to (Percentage) from (Percentage). This change resulted from a:

☐ 1. Change in the amount of stock borrowers are required to hold in the lender to (Percentage) from (Percentage).

☐ 2. Change in the stated rate of interest on your loan effective (Date).

The stated rate of interest on your loan changed to (Percentage) from (Percentage).

The change was computed based on the:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

☐ 3. Change for other reasons—describe.

Should you have any questions concerning the information contained herein, please contact us at (Telephone Number).

##### § 614.4368 Disclosure of differential interest rates.

(a) A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower:

(1) Provide a review of the loan to determine if the proper interest rate has been established;

(2) Explain to the borrower in writing the basis for the interest rate charged; and

(3) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

(b) A qualified lender offering more than one rate of interest as described in paragraph (a) of this section, shall notify prospective borrowers not later than the time of loan closing of their right to request a review under paragraph (a) of this section.

##### Subpart L—Actions on Applications; Review of Credit Decisions

###### Sec.

614.4440 Definitions.

614.4441 Notice of action on loan application.

614.4442 Credit review committee.

614.4443 Review process.

614.4444 Records.

##### Subpart L—Actions on Applications; Review of Credit Decisions

###### § 614.4440 Definitions.

For purposes of this subpart, the following definitions shall apply:



(a) "Adverse credit decision" means a decision to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for; to deny an application for restructuring;

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring;

(c) "Application for restructuring" means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(d) "Application for a loan" or "loan application" means a formal application for an extension of credit from a qualified lender;

(e) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract; and

(3) One or both of the factors listed in paragraphs (e) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(f) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products;

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in § 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under § 1.7(b)(1).

(h) "Restructure" and "restructuring" means rescheduling, reamortization,

renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

#### § 614.4441 Notice of action on loan application.

Each qualified lender shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the qualified lender shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the qualified lender makes an adverse credit decision on a loan application, the notice shall include:

(a) The specific reasons for the qualified lender's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the appraisal process, whom to contact at the lender for access to the relevant information, and the right to appear before the credit review committee.

#### § 614.4442 Credit Review Committee.

The board of directors of each qualified lender shall establish one or more credit review committees to review adverse credit decisions made by the lender with ultimate decision-making authority on the loan. The membership of each committee shall include at least one member from the lender's board. In no case shall a loan officer involved in the adverse credit decision on the loan being reviewed serve on the credit review committee when the committee reviews such loan. The duties of the members of the credit review committee may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an alternate designated by the board who shall also be a board member.

#### § 614.4443 Review Process.

(a) *Personal appearance.* Each applicant or borrower who is entitled to and has requested a review may appear in person before the credit review committee. The applicant or borrower may be accompanied by counsel or by

any other representative of such person's choice, to seek a reversal of the decision on the application under review.

(b) *Documentation.* An applicant may submit any documents or other evidence to support the information contained in the unsuccessful loan or restructuring application which the applicant believes will demonstrate that the loan or restructuring applied for is an eligible loan or eligible restructuring plan that satisfies the credit standards of the lender.

(c) *Independent Appraisals.* An applicant for a loan, or a borrower who has applied for a restructuring, may, as a part of the request for a review, request an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for an appraisal, the credit review committee shall present the applicant or borrower with a list of three accredited appraisers approved by the qualified lender, and the borrower shall select an appraiser from the list to conduct the appraisal, the cost of which shall be borne by the applicant or borrower. The lender shall provide a copy of the appraisal to the applicant or borrower, and consider the results of any such appraisal in any final determination with respect to the loan or restructuring.

(d) *Decision.* The credit review committee shall reach a decision on the application in its sole discretion, and such decision shall be the final decision of the lender. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower in writing of the decision of the committee and the reasons for the decision.

#### § 614.4444 Records.

A qualified lender shall maintain a complete file of all requests for reviews by the credit review committee, including participation in State mediation programs, and the disposition of each review by the committee. The file shall include minutes of each credit review committee meeting. A qualified lender shall also maintain sufficient materials to permit the Special Asset Group in its district, if any, under § 614.4520 to review each determination not to restructure a loan and to permit the National Special Asset Council to review any loan for which it requests information.



3. The heading of Subpart N is revised to read as follows:

**Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal**

4. Subpart N is amended by adding a new § 614.4512 to read as follows:

**§ 614.4512 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) "Application for restructuring" means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(b) "Certified lender" means a qualified lender that has been certified for financial assistance under § 6.4 of the Act.

(c) "Cost of foreclosure" means:

(1) The difference between the outstanding balance due as provided by the loan documents on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan as a nonperforming asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Foreclosure proceeding" means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I or II of the Act to effect collection of a nonaccrual or distressed loan.

(f) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in § 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under § 1.7(b)(1) of the Act.

(h) "Restructure" or restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

5. Section 614.4513 is revised to read as follows:

**§ 614.4513 Uninsured voluntary and involuntary accounts.**

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a System institution, may make voluntary advance conditional payments intended to be applied to future maturities. The monies in the advance conditional payment accounts may be available for return to the borrower in lieu of increasing his loan. System institutions may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). System institutions shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) System institutions may establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

**§ 614.4520 [Redesignated as § 614.4525]**

6. Subpart O is amended by redesignating § 614.4520 as § 614.4525.

7. Subpart N is amended by adding new §§ 614.4514–4522 to read as follows:

**§§ 614.4514 Protection of borrowers who meet all loan obligations.**

(a) A qualified lender may not foreclose on any loan because of the failure of the borrower to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless:

(1) The borrower sells or otherwise disposes of part or all of the collateral and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in a written agreement entered into by the parties.

(c) After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal and/or interest payments.

(d) If a qualified lender places any loan in nonaccrual status and such action results in an adverse action being taken against the borrower, such as revocation of any undisbursed loan commitment, the lender shall document such change of status and promptly notify the borrower in writing of such action and the reasons therefore. If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee pursuant to §§ 614.4441 and 614.4443.



The borrower must request such a review within 30 days after receipt of the notice.

**§ 614.4515 Restructuring policy and reporting.**

(a) Loan restructurings are to be accomplished in accordance with:

(1) The policy adopted by the bank board of directors under § 4.14A(g) of the Act;

(2) Any restructuring plan required by the Special Asset Group under § 4.14C(b)(2) of the Act, if applicable.

(b) Until January 6, 1993, each qualified lender shall submit semiannual reports containing information for each 6-month period, starting from January 6, 1988, to the Farm Credit Administration. The reports shall contain:

(1) The results of its review of its distressed loans, conducted in order to determine which loans are suitable for restructuring; and

(2) The financial effect of loan restructurings and liquidations on the lender.

**§ 614.4516 Restructuring procedures.**

(a) *Notice.* On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring and that the alternative to restructuring may be foreclosure, and include with such notice:

(1) A copy of the policy of the lender established under § 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) *Opportunity for meeting.* The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; (2) with respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) *Voluntary consideration of restructuring.* A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an individual borrower.

**§ 614.4517 Restructuring decision.**

(a) *Consideration of application.* When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure considering all relevant factors including:

(i) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(iii) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution;

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructurings on the loan, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(b) *Required restructuring.* If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall

restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

**§ 614.4518 Notice of denial of restructuring and right to review.**

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice, by certified mail or in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

(a) The reason(s) for the denial, and any critical assumptions and relevant information upon which the reasons are based, except that any confidential information shall not be disclosed;

(b) Notification that the borrower may request a review of the denial;

(c) Notification that any request for such review must be made in writing within 7 days after receiving such notice;

(d) A brief explanation of the process for seeking review of the denial, including the appraisal process; and the right to appear before the credit review committee, pursuant to §§ 614.4442 and 614.4443 accompanied by counsel or by any other representative, if the borrower so chooses.

**§ 614.4519 Notice before foreclosure; limitation on foreclosure.**

(a) Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for possible restructuring, and shall include with such notice a copy of the policy and the materials described in § 614.4516(a)(2). The notice shall also inform the borrower that the alternative to restructuring may be foreclosure.

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this subpart, and completion of credit review committee



consideration, if applicable. This section shall not prevent a lender from taking any action necessary to avoid the dissipation of assets, or the destruction, diversion or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion or deterioration may occur.

(c) Any foreclosure proceeding which is commenced by a certified lender after the lender's credit review committee has rejected a borrower's appeal on a restructuring application must be terminated if the Special Asset Group in its district prescribes a restructuring plan to the lender which the borrower accepts.

**§ 614.4520 Review of restructurings for certified institutions; reporting.**

(a) Within 9 months after a qualified lender is certified under § 6.4 of the Act, such lender shall review each loan that has not been previously restructured and that is in nonaccrual status on the date the lender is certified, and shall determine whether to restructure the loan. Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Within 30 days after a qualified lender is certified to issue preferred stock under § 6.27 of the Act, the board of directors of the Farm Credit Bank shall establish a Special Asset Group that shall review each determination by the lender not to restructure a loan. If a Special Asset Group determines that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement if the borrower agrees.

(c) The National Special Asset Council, established by the Farm Credit System Assistance Board, will:

(1) Under § 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under § 6.27 of the Act, and by Special Asset Groups established under paragraph (b) of this section; and

(2) Review a sample of determinations made by each special asset group that a loan will not be restructured.

(d) With respect to determinations by a Special Asset Group that a loan will not be restructured, the Special Asset Group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) The National Special Asset Council will review a sufficient number of determinations made by each Special Asset Group to foreclose on any loan to assure the Council that such group is complying with this subpart. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(f) If the National Special Asset Council determines that any Special Asset Group is not in substantial compliance with this subpart, the Council will notify the group of the determination, and take such other action as the Council considers necessary to ensure that such group complies with this subpart.

(g) In determining whether a loan is to be restructured, each qualified lender certified under § 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in § 614.4517(a). The National Special Asset Council is required by statute to consider these same factors.

**§ 614.4521 Participation in state agricultural loan mediation programs.**

(a) If initiated by a borrower, System institutions shall, either concurrently with consideration of loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and shall present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.

**§ 614.4522 Right of first refusal.**

(a) For purposes of this section, in addition to the definitions in § 614.4512, the following definitions shall apply:

(1) "Acquired property" means agricultural real estate acquired by an institution of the system as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution does not have the financial resources to avoid foreclosure;

(2) "Previous owner" means the prior record owner who was a borrower from a System institution who did not have the financial resources, as determined by the institution, to avoid foreclosure on agricultural real estate; where the borrower is not the prior record owner, "previous owner" means the prior record owner where that owner's land was used as collateral for a loan to a System borrower; and

(3) "System institution" or "institution of the System" means all System institutions, except banks for cooperatives.

(b) Upon acquiring agricultural real estate as a result of a loan foreclosure or voluntary conveyance by a borrower, the System institution shall determine whether the borrower had the financial resources to avoid foreclosure and document this determination in the file for the acquired property.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired property, or any portion of such real estate, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

(i) To purchase the property at the appraised fair market value, or

(ii) To offer to purchase the property at a price less than the appraised value. The notice shall inform the previous owner that any offer must be received within 30 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 15 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired property at a price less than the appraised value, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those that were extended to the previous owner; without first notifying



the previous owner by certified mail and providing an opportunity to purchase the property at such price or under such terms and conditions.

The previous owner shall have 15 days from receipt of the notification to submit an offer to purchase at such price or under such terms and conditions.

(4) For purposes of this section, financing by the System institution shall not be considered a term or condition of the sale of acquired property. A System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(d) Except as provided in paragraph (e) of this section, System institutions electing to lease acquired property, or any portion of such real estate, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to lease, of the appraised rental value of the property, as established by an accredited appraiser, and of the right to:

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from a previous owner to lease the property at the appraised rental value, within 15 days after the receipt of such offer, and lease the property to the previous owner, unless the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all of the payments, terms and conditions of such lease.

(3) Shall consider an offer from a previous owner to lease the property at a rate that is less than the appraised rental value of the property. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner, without first notifying the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

The previous owner shall have 15 days after receipt of the notification in which to agree to lease the property at such rate or under such terms and conditions.

(e) System institutions electing to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering:

(1) Shall notify the previous owner, by certified mail, of the availability of such property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(2) If two or more qualified bids in the same amount are received by the institution, such bids are the highest received, and one of the qualified bids is from the previous owner, the institution shall accept the offer by the previous owner; and

(3) Shall not discriminate against a previous owner.

(f) Each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

(g) The rights provided under § 4.36 of the Act, and this section, shall not diminish any right of first refusal under the law of the State in which the property is located.

#### **PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

8. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 4.3, 4.14B, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2202b, 2243, 2252, 2278b, 2278b-6.

#### **Subpart J—Prescription, Subscription and Retirement of Stock**

9. Section 615.5290 is revised to read as follows:

**§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.**

(a) If a Farm Credit Bank forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the

Farm Credit Bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

#### **PART 618—GENERAL PROVISIONS**

10. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 4.12, 4.13A, 5.9, 5.10, 5.17; 12 U.S.C. 2183, 2200, 2243, 2244, 2252.

#### **Subpart G—Releasing Information**

11. Section 618.8310 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

**§ 618.8310 Lists of borrowers and stockholders.**

\* \* \* \* \*

(b)(1) Within 7 days after receipt of a written request by a stockholder, each bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit Bank shall provide a current list of its stockholders to such requesting stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that the stockholder will:

\* \* \* \* \*

12. Section 618.8320 is amended by adding new paragraphs (b)(9) and (b)(10) to read as follows:

**§ 618.8320 Data regarding borrowers and loan applicants.**

\* \* \* \* \*

(b) \* \* \*

(9) Any information relating to a loan to a borrower which has been considered for restructuring under § 614.4517 may be provided to the District Special Asset Group, if any, and the National Special Asset Council, upon the request of either of these entities.

(10) Any information or analysis of information requested during the course of mediation by a State agency, governor's office or mediator under any State mediation program certified under



section 501 of the Agricultural Credit Act of 1987, may be provided to the State agency, governor's office or mediator, with the approval of the borrower.

13. Section 618.8325 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 618.8325 Disclosure of loan documents.**

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to a loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the qualified lender have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(4) "Loan contract" means any written agreement under which a qualified lender lends or agrees to lend funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(5) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(6) "Qualified lender" means:

(i) A System institution that makes loans (as defined in paragraph (3) of this section) except a bank for cooperatives; and

(ii) Each bank, institution, corporation, company, union, and association described in § 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under § 1.7(b)(1) of the Act.

(b) Each qualified lender shall provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a qualified lender

shall provide, as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by such borrower to that qualified lender, and a copy of each appraisal of the borrower's assets made or used by the qualified lender. To the extent that an appraisal may contain confidential third party information, the lender may protect such confidential third party information by withholding any information that would disclose identifying characteristics of the third party or his property. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

\* \* \* \* \*  
Dated: September 8, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-20880 Filed 9-13-88; 8:45 am]

BILLING CODE 6750-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 108

[Rev. 4; Amdt. 18]

#### Loans to State and Local Development Companies

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** On August 23, 1988 the President approved Pub. L. 100-418 (102 Stat. 1107), the Omnibus Trade and Competitiveness Act, of 1988, which increases the loan limit to development companies for each identifiable small business concern from \$500,000 to \$750,000. This rule implements that enactment by amending the relevant development company regulations to conform to the new law.

**DATE:** This rule is effective September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** LeAnn M. Oliver, Financial Analyst, 1441 L Street, NW., Room 720-A, Washington, DC 20416, 202/653-6416.

**SUPPLEMENTARY INFORMATION:** Section 502(2) of the Small Business Investment Act, 15 U.S.C. 696(2), as originally enacted [Pub. L. 85-699, approved August 21, 1958 [72 Stat. 689]] limited loans under that section to \$350,000. This limit was raised to \$500,000 by section 110 Pub. L. 94-305, approved June 4, 1976 (90 Stat. 663). The above-cited statute raises the limit to \$750,000, with a corresponding amendment to section 7(a)(3) of the Small Business Act, 15 U.S.C. 636(a)(3). The rule now promulgated conforms the relevant development company

regulations, 13 CFR 108.502-1, 108.503-4 and 108.503-9, to the statute.

Inasmuch as the amendments here set forth do no more than implement a statutorily mandated loan limit, and inasmuch as immediate notification of the public of the new limit is necessary, notice of proposed rulemaking and public comment thereon are unnecessary, and therefore not required pursuant to 5 U.S.C. 553(d). Since no notice of proposed rulemaking is required by section 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603. With reference to Executive Order 12291, the Agency is certain that the rule cannot achieve an annual effect on the national economy of \$100 million or more. In this regard, the Agency does not expect to make more than 100 loans each year in excess of the former loan limit. At the most, such loans could have such an annual effect of \$25 million.

There are additional reporting, recordkeeping or other compliance requirements inherent in this final rule which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are no Federal rules which duplicate, overlap or conflict with this final rule. There are no alternate means to accomplish the objectives of this final rule.

#### List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

Accordingly, Part 108 of Title 13, Chapter I of the Code of Federal Regulations, is hereby amended as follows:

#### PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b.

#### § 108.502-1 [Amended]

2. Section 108.502-1 *Section 502 loans* is amended by removing in paragraphs (d)(1) and (2) "\$500,000" each time it appears and substituting "\$750,000" therefor.

#### § 108.503-4 [Amended]

3. Section 108.503-4 *Project eligibility* is amended by removing from paragraph (c)(2) thereof "\$500,000" and substituting "\$750,000" therefor.

#### § 108.503-9 [Amended]

4. Section 108.503-9 *Debenture financing* is amended by removing from paragraph (a)(8), immediately before the



proviso, "\$500,000" and substituting "\$750,000" therefor.

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans))

Dated: September 2, 1988.

James Abdnor,  
Administrator.

[FR Doc. 88-20886 Filed 9-13-88; 8:45 am]

BILLING CODE 8025-01-M

### 13 CFR Parts 120 and 122

[Rev. 7, Amdt. 3 for Part 120; Rev. 4, Amdt. 3 for Part 122]

#### Business Loan Policy; Business Loans

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** On August 23, 1988, the President approved Pub. L. 100-418 (102 Stat. 1107), the Omnibus Trade and Competitiveness Act, of 1988, which increases the loan limit for small business concerns (other than small concerns engaged in, or adversely affected by, international trade) from \$500,000 to \$750,000. The loan limit for small concerns engaged in, or adversely affected by, international trade is \$1,000,000, to which may be added a loan for working capital, etc., up to \$250,000. That provision will be the subject of a separate rulemaking. This rule implements the enactment with the stated exception by amending the relevant regulations to conform to the new law.

**EFFECTIVE DATE:** This rule is effective September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles Hertzberg, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416. 202-653-6574.

**SUPPLEMENTARY INFORMATION:** The original loan limit under the Small Business Act, Pub. L. 85-536, approved July 18, 1958, was \$350,000. Public Law 94-305, approved June 4, 1976, raised the SBA-guaranteed portion to \$500,000, leaving direct loans and the SBA share in immediate participations (shared loans) at \$350,000. The present enactment raises permissible SBA exposure under guaranteed loans to \$750,000, again leaving direct and immediate participation loans at \$350,000.

Inasmuch as the amendments here set forth do no more than implement a statutorily mandated loan limit, and immediate notification to the public of the new limit is essential, notice of

proposed rulemaking and public comment thereon are unnecessary, and therefore not required pursuant to 5 U.S.C. 553(d) and immediate publication as a final rule is required. Since no notice of proposed rulemaking is required by section 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603.

SBA certifies that this rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12291, SBA has determined that the rule is not a major rule. SBA estimates that it will not make more than 300 loans under the new authority, and that the annual impact on the national economy cannot exceed \$75 million (assuming even that each such loan would use the new authority fully). SBA is also certain that this rule will not cause an increase in the costs for consumers, individual industries, Federal, State or local government agencies or geographic regions, or have adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

There are not additional reporting, recordkeeping or other compliance requirements inherent in this final rule which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. There are not Federal rules which duplicate, overlap or conflict with this final rule. There are no alternate means to accomplish the objectives of this final rule.

#### List of Subjects in 13 CFR Parts 120 and 122

Loan programs/business, Small business.

Accordingly, Part 120 of Title 13, Ch. 1 of the Code of Federal Regulations, is hereby amended as follows:

#### PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636 (a) and (h).

##### § 120.403-1 [Amended]

2. Section 120.403-1 *Amount of PLP Loan and of maximum guaranteed portion* is amended by striking therefrom "\$500,000" and substituting "\$750,000" therefor.

#### PART 122—BUSINESS LOANS

1. The authority citation for Part 122 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636(a).

##### § 122.7-3 [Amended]

2. Section 122.7-3 *Guaranty loans* is amended by striking "\$500,000" from the lead-in paragraph and substituting "\$750,000" therefor.

3. Section 122.7-3 *Guaranty loans* is further amended by striking from paragraph (b) thereof "\$500,000" and substituting "\$750,000" therefor.

##### § 122.55-3 [Amended]

4. Section 122.55-3 *Amount of loan* is amended by striking "\$500,000" therefrom and substituting "\$750,000" therefor.

(Catalog of Federal Domestic Assistance Nos. 59.002 Loans for Small Business and 59.012 Small Business Loans)

Dated: September 2, 1988.

James Abdnor,  
Administrator.

[FR Doc. 88-20887 Filed 9-13-88; 8:45 am]

BILLING CODE 8025-01-M

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

#### 15 CFR Parts 379 and 399

[Docket No. 80592-8092]

#### Revisions to the Export Administration Regulations Based on COCOM Review

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of List entries in the categories of metal-working machinery; electrical and power-generating equipment; general industrial equipment; transportation equipment; metals, minerals and their manufactures; chemicals, metalloids, petroleum products and related materials; and rubber and rubber products. In addition, export controls on software related to certain of these commodities are added to Part 379, the technical data portion of the Export Administration Regulations.

Amendments to the multilaterally controlled entries on the CCL (specifically, those Export Control Commodity Numbers (ECCNs) that end with "A") have directly resulted from a



review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). ECCN 4460B is being removed by this rule since the aero-engines described therein are covered by 1460A, and parts and accessories thereof that are of national security concern are covered by ECCNs 1460A, 1746A, 1749A and 1763A. Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. National security interests.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** For questions of a technical nature on equipment for the manufacture or testing of electronic components and materials (ECCN 1355A), call Robert Anstead, Electronic Components Technology Center, Bureau of Export Administration, Telephone: (202) 377-11641.

For questions of a technical nature on general industrial equipment, call Surendra Dhir, Capital Goods, Technology Center, Bureau of Export Administration, Telephone: (202) 377-8550.

For questions of a technical nature on transportation equipment, call Bruce Webb, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-3806.

For questions of a technical nature on chemicals and materials, call Jeffrey Tripp, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-5695.

For questions of a technical nature on synthetic rubber (ECCN 1801), call Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-5695.

**SUPPLEMENTARY INFORMATION:**

**Saving Clause**

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 28, 1988 may be exported under the general license provisions up to and including October 12, 1988. Any such items not actually exported before midnight October 12, 1988 require a validated export license.

**Rulemaking Requirements.**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EEA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0625-001 and 0625-0140.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to: Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 379 and 399**

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts, 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citations for Parts 379 and 399 are revised to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 18, 1985); Pub. L. 95-223 of December 23, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); and Pub. L. 100-418 of August 23, 1988.

2. Section 379.4 is amended by revising the introductory text to paragraph (d) and paragraph (d)(1) to read as set forth below:

By removing the word "and" from the end of paragraph (d)(20);

By redesignating paragraph (d)(21) as (d)(24); and

By adding new paragraph (d)(21), (d)(22), and (d)(23) to read as follows:

**§ 379.4 General License GTDR: Technical Data under Restriction.**

(d) No technical data relating to the following commodities or processes, other than technical data authorized for T and V destinations under paragraphs (b)(3) and (4) of this section<sup>14</sup> or certain technical data authorized to COCOM member countries as indicated in Supplement No. 4, paragraphs (7) and (8), may be exported under General License GTDR,<sup>14a</sup> and exports of these technical data to all destinations, except Canada,<sup>15</sup> require a validated export license<sup>15a</sup>—

<sup>14</sup> Date included in the foreign filing of a patent is also excluded from the restrictions set forth in § 379.4(d) if such foreign filing of a patent application is in accordance with the regulations of the U.S. Patent Office.

<sup>14a</sup> The availability of General License GTDR for exports of technical data to COCOM member nations, as indicated in paragraphs 7 and 8 of Supplement No. 4 to this Part 379, is subject to the written assurance requirements provided in § 379.4(f)(2).

<sup>15</sup> Only the restrictions set forth in § 379.4(c) apply to exports to technical data for use in Canada. In all other cases, an export of technical data for use in Canada may be made without either a validated or a general license. For reexport provisions applicable to Canada and other countries, see § 379.8(b) and (c).

<sup>15a</sup> Technical data relating to identified military aircraft, military helicopters and military propulsion systems are subject to the export licensing authority of the U.S. Department of State.



(1) Technical data including "specially designed software" for aircraft and helicopter airframes, aero-engines and related parts and components. (See paragraphs (6) through (8) of Supplement No. 4 to Part 379.)

(21) Development and production technical data, including "specially designed software," for reciprocating diesel engine ground vehicle propulsion systems (see paragraph (5) of Supplement No. 4 to Part 379);

(22) Technical data including "specially designed software" for marine gas turbine engines covered under ECCN 1431A (see paragraph (9) of Supplement No. 4 to Part 379);

(23) Technical data including "specially designed software" for industrial gas turbine engine components covered under ECCN 1372A (see paragraph (8) or (9) of Supplement No. 4 to this part); and

3. Supplement No. 4 to Part 379 is amended by adding new paragraphs (5) through (9) to the end of the Supplement to read as follows:

**Supplement No. 4 to Part 379—  
Additional Specifications for Certain  
Technical Data Requiring a Validated  
License to all Destinations Except  
Canada**

(5) Development and production technical data, including "specially designed software," for reciprocating diesel engine ground vehicle propulsion systems having all of the following specifications:

- (a)(i) A box volume of 1.2 m<sup>3</sup> or less;
- (ii) An overall power output of more than 750 kW based on 80/1269/EEC or ISO 2534;
- (iii) A power density of more than 700 kW/m<sup>3</sup> of box volume.

(b) Development and production technical data for a solid or dry film cylinder wall lubrication permitting operation at temperatures in excess of 723 K (450°C) measured on the cylinder wall at the top limit of travel of the top ring of the piston.

Notes: 1. The box volume is defined as the product of three perpendicular dimensions measured in the following way:

*Length:* The length of the crankshaft from front flange to flywheel face;

*Width:* The greatest of the following:

(A) The outside dimension from valve cover to valve cover;

(B) The dimension of the outside edges of the cylinder heads; or

(C) The diameter of the flywheel housing;

*Height:* The greater of the following:

(A) The dimension of the crankshaft centerline to the top plan of the valve cover (or cylinder head) plus two times the stroke; or

(B) The diameter of the flywheel housing.

(6) Technical data for aircraft and helicopter airframes, for aircraft propellers,

and for aircraft and helicopter airframe, aircraft-propeller, and "helicopter-rotor-systems" components, as follows, and "specially designed software" therefor:

**Technical Note.**—"Helicopter-rotor-systems" consist of hubs, blades, blade attachments and upper controls. Upper controls are those control elements located in the rotating system, including the swashplate if used.

(i) Design technical data using computer-aided aerodynamic analyses for integration of the fuselage, propulsion system and lifting and control surfaces to optimize aerodynamic performance throughout the flight regime of an aircraft;

(ii) Technical data for the design of active flight control systems, as follows:

(A) Technical data for configuration design for interconnecting multiple microelectronic processing elements (on-board computers) to achieve high-speed data transfer and high-speed data integration for control law implementation;

(B) Technical data for control law compensation for sensor location and dynamic airframe loads, i.e., compensation for sensor vibration environment and for variation of sensor location from center of gravity;

(C) Technical data for electronic management of systems redundancy and data redundancy for fault detection, fault tolerance and fault isolation;

**Note.**—This paragraph does not control technical data for the design of physical redundancy in hydraulic or mechanical systems or in electrical wiring.

(D) Technical data for design of flight controls that permit in-flight reconfiguration of force and moment controls;

**Technical Note.**—Active flight control systems function to prevent undesirable aircraft motions or structural loads by autonomously processing outputs from multiple sensors and then providing necessary preventative commands to effect automatic control.

(iii) Design technical data for integration of flight control, navigation and propulsion control data into a flight management system for flight path optimization;

(iv) Design technical data for protection of avionics and electrical sub-systems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from sources external to the aircraft, as follows:

(A) Technical data for design of shielding systems;

(B) Technical data for the configuration design of hardened electrical circuits and sub-systems;

(C) Determination of hardening criteria for the above;

(v) Technical data for the design, production and reconstruction of adhesively bonded airframe structural members designed to withstand operational temperatures in excess of 120°C (248°F);

**Note.**—Airframe structural members mentioned in this paragraph do not include engine nacelles and thrust reversers.

(vi) Technical data for the design and production of propeller blades constructed

wholly or partly of composite materials, and specially designed hubs therefor;

**Note.**—This paragraph does not control technical data for the production of propeller blades that are:

(a) Constructed wholly of wood or glass-fiber-reinforced plastics; or

(b) Constructed mainly of wood or glass-fiber-reinforced plastics and that use other materials only in the leading edge or tip.

(vii) Technical data for the design and production of digital electronic synchrophasors specially designed for propellers; technical data for the design of digital electronic controls for propellers; and technical data for the production of digital electronic controls for the propellers described in paragraph (vi) above;

(viii) Technical data for the design and production of active laminar flow control lifting surfaces;

**Note.**—Design technical data covered by this paragraph includes the data used to substantiate the design approach.

(ix) Technical data for the development of helicopter multi-axis fly-by-light or fly-by-wire controllers that combine the functions of at least two of the following into one controlling element:

(A) Collective controls;

(B) Cyclic controls;

(C) Yaw controls;

(x) Technical data for the development of "circulation controlled" anti-torque or directional control systems for helicopters;

**Technical Note.**—"Circulation-controlled" anti-torque and directional control systems utilize air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces. Buried fan-in-fin anti-torque designs fitted or not fitted with guide vanes such as the "fenestron" are excluded from this category.

(xi) Technical data for the development of helicopter rotor blades incorporating variable geometry airfoils;

**Technical Note.**—Variable geometry airfoils utilize training edge flaps or tabs, or leading edge slats or pivoted nose droop, that can be controlled in position in flight.

(xii) Technical data for the development of active control of helicopter blades and other surfaces used to generate aerodynamic forces and moments;

**Technical Note.**—Active control (of helicopter blades and other surfaces used to generate aerodynamic forces and moments) functions to prevent undesirable helicopter vibrations, structural loads, or helicopter rotor dynamic behavior by autonomously processing outputs from multiple sensors and then providing necessary preventive commands to effect automatic control.

(7) Technical data including "specially designed software" for "helicopter power transfer systems" or for their specially designed components as follows:

(i) Technical data for the design of "helicopter power transfer systems" or for their specially designed components for computer-aided design (CAD) or computer-aided design/computer aided manufacturing (CAD/CAM). This includes design and



analysis computer programs, parametric helicopter gear-box performance analysis and helicopter load-cycle analysis and selection;

(ii) Technical data for "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, for performance analysis and installation design studies, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

(iii) Technical data for the fabrication of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2), unless the technology remains listed in ECCN 1460A, Note 9, for a longer period;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such "helicopter power transfer system" listed technologies have been in bona fide "civil use" for more than six years, as defined in ECCN 1460A, Note 2.

(iv) Technical data for the fabrication of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR.

(v) Technical data for the assembly and production testing of "helicopter power transfer systems" or for their specially designed components, covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered civil use;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR.

(vi) Technical data for on-site installation, operation, maintenance and repair of "helicopter power transfer systems," covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(vii) Technical data for overhaul and refurbishing "helicopter power transfer

systems" or for their specially designed components covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use, unless the technology remains listed in ECCN 1460A, Note 9, for a longer period;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such "helicopter power transfer system" listed technologies have been in bona fide "civil use" for more than six years, as defined in ECCN 1460A, Note 2.

(viii) Technical data for overhaul and refurbishing "helicopter power transfer systems" or for their specially designed components covered by ECCN 1460A, and which do not embody any technology listed in Note 9, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use.

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(8) Technical data, including "specially designed software" for gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components (including components controlled under ECCN 1372A), as follows:

(i) Technical data for the design of gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components for computer-aided design (CAD) or computer-aided design/computer-aided manufacturing (CAD/CAM). This includes design and analysis computer programs, parametric engine performance analysis, engine cycle analysis and selection, component aerodynamic design, airfoil cooling and seal design;

(ii) Technical data for specific gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components, covered by ECCN 1460A, for performance analysis and installation design studies, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

(iii) Technical data for the fabrication of gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) unless the technology remains listed in ECCN 1460A, Note 8, for a longer period;

**Note.**—The technical data [except technical data controlled for foreign policy

purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR, provided that such gas turbine aero-engines or aircraft gas turbine APU listed technologies have been in bona fide civil use for more than eight years, as defined in ECCN 1460A, Note 2.

(iv) Technical data for the fabrication of gas turbine aero-engines or gas turbine APU's or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

**Note.**—The technical data [except technical data controlled for foreign policy purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR.

(v) Technical data for the assembly and production testing of gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components, covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered civil use;

**Note.**—The technical data [except technical data controlled for foreign policy purposes and described in Part 379, Supplement No. 4, paragraph (4)] described in this paragraph may be exported to COCOM member nations under General License GTDR.

(vi) Technical data for on-site installation, operation, maintenance and repair of gas turbine aero-engines or aircraft gas turbine APU's covered by ECCN 1460A, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those systems have entered bona fide civil use;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(vii) Technical data for overhaul and refurbishing gas turbine aero-engines or aircraft gas turbine APU's or for their specially designed components, covered by ECCN 1460A, and which embody any technology listed in ECCN 1460A, Note 8, shall require an individual validated license for a period of twelve years (as defined in ECCN 1460A, Note 2) after those engines have entered bona fide civil use, unless the technology remains listed in ECCN 1460A, Note 8, for a longer period;

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License



GTDR provided that such gas turbine aero-engines or aircraft gas turbine APU listed technologies have been in bona fide civil use for more than eight years, as defined in ECCN 1460A, Note 2.

(viii) Technical data for overhaul and refurbishing gas turbine aero-engines or aircraft gas turbine APUs or for their specially designed components, covered by ECCN 1460A, and which do not embody any technology listed in Note 8, shall require an individual validated license for a period of eight years (as defined in ECCN 1460A, Note 2) after those engines have entered bona fide civil use.

**Note.**—The technical data described in this paragraph may be exported to COCOM member nations under General License GTDR, or to all other T & V destinations, except the People's Republic of China and Afghanistan, when sent as part of a transaction involving and directly related to, a commodity licensed for export from the United States, or authorized for reexport, to the same consignee and destination to which the commodity was or will be exported.

(9) Technical data for marine gas turbine engines that are controlled under ECCN 1431A (including components controlled under ECCN 1372A), as follows:

(i) Technical data that is common to aero-engine technical data controlled by paragraph (8) is controlled pursuant to paragraph (8) above;

(ii) Technical data for liquid-cooled turbine blades or vanes and nozzles capable of operating in hot gas temperature environments greater than 1,000°C and their associated systems;

**Technical Note.**—“Associated systems” are closely connected to the engine and consist of the specially designed cooling fluid and fuel control systems, pumps, condensers and fluid purification systems;

(iii) Technical data for fuel nozzles, combustors and gas turbine engine-mounted fuel-handling systems (fuel pumping, metering and controls) that permit marine gas turbines to burn heavy residual fuel-oils (ASTM grades 5 and 6 or equivalent);

**Technical Note.**—ASTM grade 5 residual fuel-oil has a maximum kinematic viscosity of 81 centistokes at 50°C (122°F). Kinematic viscosity is measured by the Saybolt-furol viscosimeter (the measures the time in seconds for 60 cc of the oil to pass through the furol orifice).

(iv) Technical data for high-temperature (above 700°C gas temperature) heat exchangers for pre-heating compressor exit air;

(v) Technical data for lightweight, compact combined gas turbine and steam (COGAS) systems having heat recovery rates of more than 40,000 BTU/hr. per cubic foot of waste heat boiler volume or more than 1000 BTU/hr. per pound of waste heat boiler weight, designed for use with gas turbine engines for marine propulsion or shipboard power generation.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1086A is amended by adding a

NOTE to the end of paragraph (c) to read as follows:

1086A Specially designed or modified equipment, tools, dies, molds, fixtures and gauges for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines; specially designed components and accessories therefore.

List of Equipment Controlled by ECCN 1086A

\* \* \* \* \*

(c) \* \* \*

**Note.**—This paragraph (c) controls only broaching machines specially designed for the manufacture of aircraft or aircraft derived gas turbine engines, and not general purpose broaching machines specially adapted for that purpose.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by revising the phrase “digitally controlled” to read “stored program controlled” in paragraph (b) of the Advisory Note for the People's Republic of China.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the words “digital control” that appear in paragraph (b)(1)(viii) to read “stored program control”;

By revising the word “microcircuits” that appears in paragraph (b)(5) introductory text to read “integrated circuits”;

By revising the phrase “see Technical Note 3 below” in paragraph (b)(2)(vii) to read “see Note 1 following paragraph (b)(8)”;

By adding new Notes 1 and 2 after paragraph (b)(5)(iv);

By adding “; or” after the reference to “24 terminals” in paragraph (b)(7)(ii)(c) and removing “; or” that appears after the Note following paragraph (b)(7)(ii)(c).

By redesignating Technical Note 1 and Technical Note 2 that appear after paragraph (b)(7)(ii)(d) as an undesignated Technical Note and NOTE 1 as set forth below;

By redesignating the NOTE that appears after newly designated NOTE 1 as NOTE 2 as set forth below;

By revising paragraph (m) and (o) of the “Advisory Note for the People's Republic of China,” to read as set forth below; and

By revising the word “micro-circuits” that appears in paragraph (v) of the Advisory Note for the People's Republic of China” to read “integrated circuits”.

ECCN 1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and “specially designed software” therefor.

\* \* \* \* \*

List of Equipment Controlled by ECCN 1355A

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(iv) \* \* \*

**Notes.**—1. General purpose resistance type spot welders are not covered by paragraph (b)(5).

2. Thermal compression bonders, also known as nailhead bonders, are controlled under the terms of this ECCN.

\* \* \* \* \*

(7) \* \* \*

(ii) \* \* \*

(d) Measurement of rise times, fall times and edge placement times \* \* \*

**Technical Note.**—The terms “integrated circuit” and “assembly” are defined in ECCN 1564A.

**Notes.**—1. Test equipment that is not of a general purpose nature and that is specially designed for, and dedicated to, testing “assemblies,” or a class of “assemblies” for home \* \* \*

2. Test equipment that is not of a general purpose nature and that is specially designed for, and dedicated to, testing electronic components, “assemblies,” and integrated circuits \* \* \*

\* \* \* \* \*

(m) Mask fabrication equipment using photo-optical methods that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

\* \* \* \* \*

(o) Photo-optical contact and proximity mask align and expose equipment defined in Note 4(f), and projection aligners that can produce pattern sizes no finer than 3 micrometers.

\* \* \* \* \*

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1356A is amended by revising the heading of the entry and by adding a new NOTE to appear after the heading, as follows:

ECCN 1356A Equipment specially designed or incorporating modifications for the continuous coating of polyester-base magnetic tape controlled by ECCN 1572A, and specially designed components therefor.

**Note.**—This ECCN does not control general purpose continuous coating equipment.

\* \* \* \* \*

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1358A is amended by revising the



heading of the entry and the "Definitive List of Machinery and Equipment Controlled by ECCN 1358A", as follows:

**ECCN 1358A** Equipment specially designed for the manufacture or testing of devices and assemblies thereof controlled by ECCN 1588A or magnetic recording media described in ECCN 1572A and specially designed components therefor.

\* \* \*

Definitive List of Machinery and Equipment Controlled by ECCN 1358A

**Technical Note.**—For this ECCN 1358A, single aperture forms described in paragraph (b) of ECCN 1588A with a maximum dimension less than 0.76 mm (30 mils) are considered controlled types.

(a) Equipment for the manufacture of single and multi-aperture forms controlled by paragraphs (b), (c) or (d) of ECCN 1588A, as follows:

- (1) "Automatic" presses to produce controlled types;
- (2) Press dies to produce controlled types;
- (3) "Automatic" equipment for monitoring, grading, sorting, exercising or testing of controlled types;

(b) Equipment for the manufacture of thin film storage or switching devices having square hysteresis loops and "automatic" equipment for monitoring, grading, sorting, exercising or testing devices controlled by paragraph (e) of ECCN 1588A;

(c) "Automatic" equipment for monitoring, exercising or testing assemblies of devices controlled by paragraph (b), (c), (d) or (e) of ECCN 1588A;

(d) Equipment that incorporates specially designed modifications for the application of magnetic coating to flexible disk recording media with a "packing density" exceeding 2,460 bits per cm (6,250 bits per inch);

**Note.**—This ECCN 1358A does not control general purpose coating equipment.

(e) Equipment specially designed for the application of magnetic coating to non-flexible (rigid) disk type recording media as described in paragraph (d) of ECCN 1572A;

(f) Stored program controlled equipment for monitoring, grading, exercising or testing recording media, other than tape, controlled by paragraph (d) of ECCN 1572A.

**Note 1.**—The term "automatic" refers to machinery not requiring the assistance of a human operator to complete its "function(s)" during each complete cycle of operations.

**Note.**—The term "function(s)" does not include the initial loading or final unloading of material from the machine.

**(Advisory) Note 2.**—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by paragraph (d) above, provided that:

- (a) The equipment is used for a legitimate civil end-use and is reasonable for that use;
- (b) Reserved; and

(c) The equipment cannot produce recording media for computer flexible disk cartridges exceeding a "gross capacity" of 17 million bits.

**(Advisory) Note 3 for the People's Republic of China.**—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) "Automatic" equipment for monitoring, grading, exercising or testing recording media controlled by paragraph (d) of ECCN 1572A having the following characteristics:

(1) For digital recording tape, a maximum recording density of less than 3,937 bits per cm; or

(2) For analog recording tape, a coating thickness greater than 2.54 micrometers;

(b) Diskette unit test equipment.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1372A is amended by adding a *Technical Data* paragraph after the *Special Licenses Available* paragraph to read: "*Technical Data*: Exports of certain related technical data require a validated license to all destinations except Canada (see § 379.4(d)(23))."

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1431A is amended by adding a *Technical Data* paragraph after the *Special Licenses Available* paragraph to read as set forth below and by revising the Notes and Advisory Note that appear after the *Technical Data* paragraph to read as set forth below:

**1431A Marine gas turbine engines (marine propulsion or shipboard power generation engines), whether originally designed as such or adapted for such use, and specially designed components therefor.**

\* \* \*

**Technical Data:** Exports of certain technical data relating to marine gas turbine engines and components thereof require a validated license to all destinations except Canada (see § 379.4(d)(22)).

**Notes.**—1. Control of aero or industrial gas turbine engines and their specially designed components that have been adapted for marine propulsion or shipboard power generation does not re-control (or control, for industrial gas turbine engines) the unmodified version of such engines and their specially designed components (see also ECCN 1460A).

2. Shipboard power generation does not include offshore platform applications.

**(Advisory) Note 3.**—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of engines and their specially designed components covered by this ECCN for non-marine propulsion or non-shipboard civil end-use, provided that:

- (a) The numbers to be exported are appropriate for the stated end-use;
- (b) Only the minimum necessary technical data for operation, maintenance and repair are transferred; and

(c) None of the following technical data are transferred:

(1) Technical data that are common to aero-engine technical data controlled by § 379.4(d)(1) and that are not described under Note 8 in ECCN 1460A;

(2) Technical data for liquid-cooled turbine blades or vanes and nozzles capable of operating in hot gas temperature environments greater than 1,000°C and their associated systems;

**Technical Note.**—"Associated systems" are closely connected to the engine and consist of the specially designed cooling fluid and fuel control systems, pumps, condensers and fluid purification systems;

(3) Technical data for fuel nozzles, combustors and gas turbine engine-mounted fuel-handling systems (fuel pumping, metering and controls) that permit marine gas turbines to burn heavy residual fuel oils (ASTM grades 5 and 6 or equivalent);

**Technical Note.**—ASTM grade 5 residual fuel oil has a maximum kinematic viscosity of 81 centistokes at 50°C (122°F), and ASTM grade 6 residual fuel oil has a kinematic viscosity range of 92 to 638 centistokes at 50°C (122°F). Kinematic viscosity is measured by the Saybolt-furul viscosimeter (the test measures the time in seconds for 60 cc of the oil to pass through the furul orifice).

(4) Technical data for high-temperature (above 700°C gas temperature) heat exchangers for pre-heating compressor exit air;

(5) Technical data for lightweight, compact combined gas turbine and steam (COGAS) systems having heat recovery rates of more than 40,000 BTU/hr. per cubic foot of waste heat boiler volume or more than 1000 BTU/hr. per pound of waste heat boiler weight, designed for use with gas turbine engines for marine propulsion or shipboard power generation.

**Note 4.**—Core-section modules and specially designed components covered by ECCN 1460A shall be treated under the provisions of that ECCN, even if the gas turbine aero-engine has been modified for use in marine propulsion or shipboard power generation.

**Note 5.**—[Reserved.]

**Note 6.**—[Reserved.]

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by adding a *G-COM Eligibility* paragraph after the second Note following the *Special Licenses Available* paragraph to read as set forth below:

By revising the words "or in ECCNs 1485A, 1501A" that appear in paragraph (a) to read "or that is controlled under ECCNs 1485A, 1501A";

By revising paragraph (b) as set forth below;

By adding a Note after paragraph (b) as set forth below;

By revising paragraph (c) introductory text as set forth below;

By adding "and the People's Republic of China" after the reference to



"Country Groups QSWYZ" and before the parenthesis at the end of paragraphs (c)(1) and (2):

By revising the parenthetical text following paragraph (d)(4) as set forth below:

By revising the reference to "Note 1" that appears in Note 8 to read "Note 2";

By removing the following entries from the list in Note 8 entitled "I. Materials and manufacturing procedures":

"Metallic coatings  
plasma sprayed  
other  
Ceramic coatings."

By revising the reference to "Note 1" that appears in Note 9 to read "Note 2";

By removing the following entry from the list in Note 9 entitled "I. Materials and manufacturing procedures," under paragraph "A. Rotor heads, containing":

"Elastomeric bearings (oscillating bearings using flexible synthetic material to allow the relative movement of the supported parts)"  
and

By removing the following entry from the list in Note 9 entitled "I. Materials and manufacturing procedures," under paragraph "B. Gear boxes, containing":  
"Casings without shims and the interchangeable bevel gears associated with them".

#### ECCN 1460A Aircraft and helicopters, aero-engines, and aircraft and helicopter equipment

**G-COM Eligibility:** Commodities described in paragraphs (b), (c), and (d) of the List, when they are for incorporation into, or incorporated in, bona fide "civil aircraft" or "civil helicopters," regardless of end-use, subject to the prohibitions contained in § 371.2(c).

#### List of Nonmilitary Equipment Controlled by ECCN 1460A

(b) "Helicopter power transfer systems" except those destined for use in civil helicopters only, as follows:

That have been in civil use in bona fide "civil helicopters" for more than eight years (Helicopter power transfer systems in civil use for more than eight years require a validated export license to destinations in Country Groups QSWYZ and the People's Republic of China);

**Note.**—Individual validated licenses will be granted for "helicopter power transfer systems" destined for use in "civil helicopters" where the systems are for replacement in or servicing of specific, previously exported helicopters, if all other conditions for export are met.

(c) Gas Turbine engines and auxiliary power units (APUs) for use in aircraft or helicopters, except those destined for use in

"civil aircraft" or "civil helicopters" only as follows:

(d) \* \* \*  
(4) \* \* \*  
(Aero-engines, APUs or "helicopter power transfer systems" that have any special feature designed for a military application are controlled by the Department of State. (See Supp. No. 2 to Part 370.) For industrial gas turbine engine components, see ECCN 1372A; for marine gas turbine engines, see ECCN 1431A.)

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) is amended by removing ECCN 4460B.

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 5460F is amended by revising the *Technical Data* paragraph to read:  
"Technical Data: Exports of certain technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 379.4(d)(1)."

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6460F is amended by revising the *Technical Data* paragraph to read:  
"Technical Data: Exports of certain technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 379.4(d)(1)."

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufacturers), ECCN 1631A is amended by revising the heading "List of Magnetic Metals Controlled by ECCN 1631A" to read as set forth below; by adding a NOTE to the end of paragraph (a) to read as set forth below and by correcting the reference to "2 x 10<sup>-4</sup> micro/ohm. cm." that appears in paragraph (f)(2)(ii) to read "2 x 10<sup>-4</sup> ohm. cm."

#### 1631A Magnetic metals of all types and of whatever form.

List of Characteristics, Any One of Which Qualifies a Metal for Control under ECCN 1631A

(a) \* \* \*  
**Note.**—Measurement of initial permeability must be carried out on materials that:

(a) Have a thickness between 0.076 mm (3 mil) and 2.54 mm (100 mil); and  
(b) Are fully annealed.

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity

Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1746A is amended by removing the introductory text to the "List of Polymeric Substances and Manufactures Controlled by ECCN 1746A";

By revising the reference to "22.075 mN per tex" that appears in paragraph (c)(1)(i) to read "22.075 N per tex";

By revising the reference to "970 mN per tex" that appears in paragraph (c)(1)(ii) to read "0.970 N per tex";

By adding a new NOTE after paragraph (c)(2) as set forth below;

By adding new paragraphs (k) and (l) as set forth below;

By revising the words "i.e., mN per tex" that appear in paragraph (a) of the Technical Note to read "i.e., Newtons per tex"; and

By revising the words "expressed in mN per tex" that appear in paragraph (b) of the Technical Note to read "expressed in Newtons per tex".

#### ECCN 1746A Polymeric substances and manufactures thereof, as described in this entry.

List of Polymeric Substances and Manufactures Controlled by ECCN 1746A

(c) \* \* \*  
(2) \* \* \*

**Note.**—This paragraph (c) includes only those heterocyclic polyamide structures containing the benzene ring considered typical of aromatic compounds.

(k) Polymeric products of butadiene, as follows:

(1) Carboxyl terminated polybutadiene; hydroxyl terminated polybutadiene; thiol terminated polybutadiene; and cyclized 1,2-polybutadiene;

(2) Moldable copolymers of butadiene and acrylic acid;

(3) Moldable terpolymers of butadiene, acrylonitrile and acrylic acid or any of the homologs of acrylic acid;

(1) Carboxyl terminated polyisoprene. (See also ECCN 1564A.)

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1754A is amended by revising the heading of the entry:

By revising the heading and the introductory text to the "List of Fluorocarbon Compounds, Materials and Manufactures Controlled by ECCN 1754A" to read as set forth below;

By revising the reference to "200 microns" that appears in paragraph (a)(1) to read "200 micrometers";



By revising the introductory text to paragraph (b) and paragraph (b)(2) to read as set forth below;

By adding paragraph (b)(5) to read as set forth below;

By revising paragraph (c)(1) to read as set forth below;

By adding a parenthetical statement after paragraph (c)(4)(ii) to read as set forth below; and

By revising the reference to "18.9 liters" that appears in the Advisory Note to read "19 liters".

**ECCN 1754A Fluorinated compounds, materials and manufactures as described in this entry.**

\* \* \*

List of Fluorinated Compounds, Materials and Manufactures Controlled by ECCN 1754A

Fluorinated compounds, materials and manufactures, as follows:

\* \* \*

(b) Polymeric materials and intermediates, unprocessed, as follows:

(2) Fluoroelastomeric compounds composed of at least 95% of a combination of two or more of the following monomers: tetrafluoroethylene, chlorotrifluoroethylene, vinylidene fluoride, hexafluoropropylene, bromotrifluoroethylene, iodotrifluoroethylene, perfluoromethylvinylether and perfluoropropoxypropylvinylether;

\* \* \*

(5) Fluorinated silicone rubber and intermediates for their production containing 10% or more of combined fluorine;

(c) \* \* \*

(1) Greases, lubricants and dielectric, damping and flotation fluids made of at least 85% of any of the materials in paragraph (a) or (b) above;

\* \* \*

(4) \* \* \*

(ii) \* \* \*

(For hydraulic fluids using these elements, see also ECCN 1702A.)

\* \* \*

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 1801A is removed.

19. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G is amended by revising the heading of the entry to read "Other rubber and rubber products, n.e.s., except those controlled by ECCNs 1746A and 1754A." \*

Dated: September 8, 1988.

Michael E. Zacharia,  
Assistant Secretary for Export  
Administration.

[FR Doc. 88-20802 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-DT-M

## 15 CFR Part 399

[Docket No. 80518-8118]

### Corrections, Clarifications and Conforming Changes to the Export Administration Regulations

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This document makes corrections and conforming changes to the Export Administration Regulations (15 CFR Parts 368-399) that are based on final rules previously published in the Federal Register. An effective date that was inadvertently omitted from "Reduction in Export Control for Bromine Chemicals" (51 FR 37907, Oct. 27, 1986) is added. Most of the information contained in "Clarification of Validated License Requirement for Certain Analytical Instruments Controlled under 1565A" (52 FR 405, Jan. 6, 1987) is modified to apply to all instruments with signal processing, and not just Fourier Transform Infra-Red Spectrometers and Fourier Transform Nuclear Magnetic Resonance Spectrometers. That information is added as regulatory text under Interpretation 1 in Supplement No. 1 to 15 CFR 399.2.

**EFFECTIVE DATES:** Amendment 2 (adding the effective date to the "Bromine Chemicals" document published Oct. 27, 1986 amending Interpretation 24 of Supplement No. 1 to § 399.2) is effective October 27, 1988; and Amendment 3 (to Interpretation 1 of Supplement No. 1 to § 399.2) is effective September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

#### SUPPLEMENTARY INFORMATION:

##### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAR), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a

delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions collections of information that are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

#### List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

#### PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of



October 27, 1986 (51 FR 39505, October 29, 1986); and Pub. L. 100-418 of August 22, 1988.

2. In "Bromine Chemicals; Reduction in Export Control" amending § 399.2, Supplement 1, Interpretation 24, published in the *Federal Register* on October 27, 1986: On page 37908, in the first column, "Effective Date: October 27, 1986" is added to appear before the "For Further Information Contact" paragraph.

3. The existing text in Interpretation 1 in Supplement No. 1 to § 399.2 is designated as 1 and the heading "Nuclear non-proliferation controls" is added (the introductory text is republished). Text is added as No. 2 to the end of Interpretation 1 in Supplement No. 1 to § 399.2 to read as set forth below.

#### Supplement No. 1 to § 399.2— Interpretations

##### *Interpretation 1: Electronic Computers and Related Equipment (ECCN 1565A)*

1. Nuclear non-proliferation controls. The following equipment is subject to nuclear non-proliferation controls:

\* \* \* \* \*

2. Digital computers or related equipment designed or modified for signal processing. ECCN 1565A releases from control "embedded" and "incorporated" "digital computers" or "related equipment" that meet the requirements specified in paragraphs (h)(2)(i) and (h)(2)(ii) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" on the Commodity Control List (15 CFR 399.1, Supplement No. 1). However, if the "digital computer" or "related equipment" is designed or modified for "signal processing," the decontrol provisions of paragraphs (h)(2)(i) and (h)(2)(ii) do not apply—i.e., if the "signal processing" function in a digital computer or related equipment is implemented in hardware, the computer or related equipment is not released from control under these paragraphs. However, if the "signal processing" function is implemented only through software, the computer or related equipment is released from control, provided the other requirements of paragraphs (h)(2)(i) and (h)(2)(ii) are met.

"Signal processing" software is controlled in Supplement No. 3 to 15 CFR Part 379. However, paragraph (a)(3)(ii) under the "List of Software Subject to Supplement No. 3 to Part 379" exempts from Supplement No. 3 the minimum "signal processing" software necessary to perform the function for which a decontrolled piece of equipment was designed, if the software is in machine executable form (object code) and supplied with the equipment. This software may be exported with the equipment under General License GTDR to all destinations, except those in Country Groups S and Z, without written assurance.

Therefore, instruments that perform "signal processing" are classified under ECCN 6599G on the Commodity Control List (15 CFR 399.1, Supplement No. 1) when they contain

"embedded" or "incorporated" "digital computers" or "related equipment" that meet the requirements of paragraphs (h)(2)(i) and (h)(2)(ii) of ECCN 1565A and the "signal processing" function is implemented in software, not hardware. The minimum software necessary to make this equipment perform the function for which it was designed may be exported with the equipment under General License GTDR to all destinations, except those in Country Groups S and Z.

Dated: September 8, 1988.

Michael E. Zacharia,  
Assistant Secretary for Export  
Administration.

[FR Doc. 88-20799 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[T.D. 8220]

#### Transition Rules for Certain Qualified Business Units Using a Profit and Loss Method of Accounting for Tax Years Beginning Before January 1, 1987

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains a correction to temporary regulations that were published in the *Federal Register* for Tuesday, August 25, 1988 (53 FR 32384). T.D. 8220 issued temporary regulations relating to transition rules for branches of United States persons, i.e., qualified business units (QBUs), which used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986.

**EFFECTIVE DATE:** This correction is effective August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention: CC:LR:T (INTL-392-88) (202-634-5406, not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 25, 1988, the *Federal Register* published (53 FR 32384) Treasury Decision 8020 which set forth transition rules for certain qualified

business units using a profit and loss method of accounting for tax years beginning before January 1, 1987. The text of the temporary regulations also served as the text for a notice of proposed rulemaking that was published at page 32405 in the proposed rules section of the same issue of the *Federal Register*.

#### Need For Correction

As published, T.D. 8020 contained a typographical error. This document corrects that error.

#### Correction Of Publication

Accordingly, the publication of temporary regulations (T.D. 8020), which was the subject of FR Doc. 88-19190, is corrected as follows:

Paragraph 1. On page 32386, column 1, line 20 of § 1.987-1T(a)(1), which reads, "such QBUs must account for use the" is removed and the language "such QBUs must use the" is added in its place.

Dale D. Goode,

Chief, Technical Section Legislation and Regulations Division.

[FR Doc. 88-20910 Filed 9-13-88; 8:45 am]

BILLING CODE 4830-01-M

#### 26 CFR Parts 1, 501, 504, 505, 506, 507 511, 512, 518, 519, and 602

[T.D. 8228]

#### Allocation and Apportionment of Interest Expense and Certain Other Expenses

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document provides temporary Income Tax Regulations relating to the allocation and apportionment of interest expense and certain other expenses for purposes of the foreign tax credit rules and certain other international tax provisions. These regulations provide the public with guidance necessary to comply with the Tax Reform Act of 1986. In addition, regulations under tax conventions with Australia, Belgium, Netherlands, Japan, United Kingdom, Finland, Italy, New Zealand, and Canada have been removed as obsolete.

**EFFECTIVE DATE:** These regulations are effective for taxable years beginning after December 31, 1986. In general, these temporary regulations apply to the allocation and apportionment of interest expense and certain other expenses for taxable years beginning after December 31, 1986.



**FOR FURTHER INFORMATION CONTACT:**

Regarding the allocation and apportionment of interest expense, David Merrick, and regarding the allocation and apportionment of other expenses, Carl Cooper, both of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (David Merrick, 202-566-6276; Carl Cooper, 202-634-5406, not a toll-free call).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the affirmative elections contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1072. The estimated annual burden per respondent is 10 minutes.

This estimate is an approximation of the average time expected to be necessary to make the affirmative elections. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these affirmative elections, and where to submit comments on these elections and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register*.

**Background**

This document contains temporary Income Tax Regulations (26 CFR Part 1) under sections 861(b), 863(a), 863(b), and 864(e) of the Internal Revenue Code of 1986. The temporary regulations are issued under the authority contained in sections 861(b) (26 U.S.C. 861(b)), 863(a) (26 U.S.C. 863(a)), 863(b) (26 U.S.C. 863(b)), 864(e) (26 U.S.C. 864(e)), 865(i) (26 U.S.C. 865(i)), 7701(f) (26 U.S.C. 7701(f)), and 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986. Proposed regulations that would implement section 864(e) were published in the *Federal Register* at 52 FR 34580 on September 11, 1987.

**Need for Temporary Regulations**

The proper application of section 864(e) depends upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. These regulations are necessary to provide taxpayers with immediate guidance in the application of section 864(e). Accordingly, good cause is found to dispense with notice and public procedure pursuant to 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

**Explanation of Provisions***Statutory Provisions*

The Tax Reform Act of 1986 revised the rules for the allocation and apportionment of interest and other expenses for purposes of the international tax provisions. Section 864(e)(2) generally requires taxpayers to allocate and apportion interest expense on the basis of assets. Furthermore, section 864(e)(4) requires an adjustment for earnings and profits to the tax book value of the stock of certain corporations owned by the taxpayer for purposes of apportioning expenses, including interest, on the basis of assets.

Section 864(e) (1) and (5) provides special rules that apply in allocating and apportioning interest expense in the case of an affiliated group of corporations, as defined in the regulations. Interest expense of each member is allocated and apportioned on the basis of apportionment fractions that are computed as if all members of the group were a single corporation. The section 1504 definition of an affiliated group is modified for purposes of section 864(e) to include within the affiliated group section 936 corporations.

Section 864(e)(3) provides rules for the treatment of tax exempt income and assets in allocating and apportioning expenses generally.

Section 1215(c) of the Tax Reform Act of 1986 provides transition rules in allocating and apportioning interest expense on the debt outstanding on November 16, 1985.

Section 864(e)(6) provides in general that expenses other than interest which are not directly allocable and apportionable to any specific income producing activity or property shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

*Affiliated Group Apportionment Generally*

Section 1.861-8(a)(2) provided that, if an affiliated group of corporations joins in filing a consolidated return under

section 1501, the provisions of § 1.861-8 are to be applied separately to each member in that affiliated group for purposes of determining such member's taxable income.

This provision is revised in § 1.861-8T(a)(2) to reflect the existence of new section 864(e).

Section 1.861-8(b)(3) provided that expenses which are related to supportive functions (such as overhead, general and administrative, and supervisory expenses) may, in some cases, be allocated and apportioned along with other expenses to which they relate and which are more directly attributable to specific income producing activities or property. This provision is amended in § 1.861-8T(b)(3) to state that such expenses, if they are allocable and apportionable under section 864(e)(6), may not be allocated and apportioned by reference only to classes of gross income and expenses of the member of the affiliated group that incurred the expense.

*Asset Method Apportionment Generally*

Section 1.861-8T(c)(2) indicates that, although apportionment on the basis of assets is mandatory in connection with interest expenses, it may also be used in connection with the apportionment of other expenses. Taxpayers apportioning expenses on the basis of assets may do so either on the basis of the fair market value or the tax book value of those assets. However, once a taxpayer apportions expenses on the basis of the fair market value of assets, it may not change back to the tax book value method without securing the Commissioner's approval. For taxpayers who apportion expenses on the basis of the tax book value of assets, the basis in assets consisting of stock in designated subsidiary corporations must be adjusted to reflect retained earnings and profits, as provided in § 1.861-12T(c) of the regulations described below.

*Tax Exempt Income and Assets*

Section 1.861-8T(d)(2) provides that, in allocating deductions that are definitely related to separate classes of gross income, exempt income shall be taken into account. In apportioning deductions for expenses that are definitely related and allocable to a class of gross income consisting of multiple groupings of income (whether statutory or residual) or to all gross income, however, exempt income and exempt assets shall not be taken into account. For this purpose, tax exempt income and assets do not include income of a foreign person that is not effectively connected with the conduct



of a trade or business in the United States and related assets, or income of a possessions corporation for which a credit is allowed under section 936 and related assets.

#### *Effective Dates*

Section 1.861-8T(h) provides the effective dates for the rules of §§ 1.861-8T through 1.861-14T.

#### *General Rules Regarding the Allocation of Interest Expense*

Section 861-9T(a) provides that any expense that is deductible under section 163 (including original issue discount) constitutes interest expense for purposes of that section, as well as for purposes of §§ 1.861-10T, 1.861-11T, 1.861-12T, and 1.861-13T. Because money is considered to be fungible, interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. Exceptions to the fungibility rule are set forth in § 1.861-10T. Thus, interest expense is considered related to all income producing activities and assets of the taxpayer and, thus, allocable to all the gross income which the assets of the taxpayer generate, have generated, or could reasonably be expected to generate.

Section 1.861-9T(b) describes the treatment of certain expenses and losses that are considered to be the equivalent of interest, even though they are not designated as such. These include any transaction in which the amount of loss or expense is substantially incurred in consideration of the time value of money, expenses or losses incurred in certain hedged foreign currency borrowings, and loss incurred in the sale of certain trade receivables. The rule concerning the treatment of losses incurred in the sale of certain trade receivables is issued under authority granted by section 865(i). The section also describes the treatment of bond premium.

The Service is considering the adoption of a rule under section 863(a) that would require the apportionment of a lessee's rent expense in the same manner as interest expense in the case of certain transactions that qualify as leases for tax purposes but are similar in certain respects to financing transactions. The Service contemplates that such a rule would apply prospectively from the date of its promulgation. Taxpayers are invited to comment on the extent to which rental expense should be treated in the same manner as interest expense.

Section 1.861-9T(c) indicates that, prior to allocation and apportionment of

interest expense, it must first be determined that the interest expense is currently deductible. A number of provisions in the Code disallow, capitalize, or suspend deductions of interest expense.

Section 1.861-9T(d) provides that individuals generally shall apportion interest expense under different rules according to the type of interest expense incurred, as determined under section 163(h). Section 1.861-9T(d) also provides rules for determining what portion of the interest expense of nonresident aliens is connected with effectively connected income, which supplement § 1.873-1 of the regulations. In addition, it provides rules for trusts and estates.

In connection with inbound investment of nonresident aliens, the Service is considering the adoption of a source rule that would provide that any interest expense that is considered to be connected with effectively connected income shall constitute United States source income in the hands of the recipient of such interest. Taxpayers are invited to comment on this proposal.

Section 1.861-9T(e) provides apportionment rules for partnerships. Interest expense of a partnership that is directly allocable to specific property under section 1.861-10T retains its character as directly allocable interest expense in the hands of the partner. In the case of interest expense that is not directly allocable to identified property and is subject to apportionment, different apportionment rules may apply depending upon whether the partner is an individual or a corporation. In general, the partner's distributive share of interest expense that is not directly allocable to identified property is subject to apportionment at the level of the partner, taking into account generally the partner's allocable share of partnership assets. In addition, a special rule requires the direct allocation of a partner's distributive share of partnership interest expense to that partner's distributive share of partnership income in the case of certain partners owning a less than 10 percent partnership interest. The section also provides rules for determining what portion of the interest expense of foreign partners is considered to be connected with effectively connected income.

Section 1.861-9T(f) provides apportionment rules for corporations. Domestic corporations shall apportion interest expense using the asset method described in paragraph (g) of this section and the applicable rules of §§ 1.861-10T through 1.861-13T. The section also provides rules concerning the treatment of foreign branches of domestic corporations. The section

further indicates that, subject to consistency rules, the interest expense of a controlled foreign corporation may be apportioned either using the asset method described in paragraph (g) of this section or using the modified gross income method described in paragraph (j) of this section, for purposes of computing subpart F income and computing earnings and profits for all other federal tax purposes. For purposes of characterizing the stock of a controlled foreign corporation, a conforming method must be employed. See § 1.861-11T(c)(2).

Section 1.861-9T(g) describes the asset method. There are two methods of apportionment based on assets: Tax book value and fair market value. A taxpayer electing to apportion its interest expense on the basis of the fair market value of its assets must establish the fair market value to the satisfaction of the Commissioner. The section also outlines the potential consequences of a taxpayer's failure to establish the fair market value of its assets. Special rules concerning the application of the fair market value method are set forth in § 1.861-9T(h). Although § 1.861-8T(c)(2) indicates that the use of the fair market value method constitutes a binding election thereof, § 1.861-9T(g) permits a taxpayer that used the fair market value method for a substantial portion of its consolidated group prior to 1987, in effect, to defer the binding election of the continued use of the fair market value method until the first tax year starting after 1987.

Section 1.861-9T(g) also provides rules concerning the annual averaging of asset values and rules concerning the characterization of assets. In general, the annual average of asset values within each statutory grouping and the residual grouping is computed for the year on the basis of the total value of assets in such categories at the beginning and end of the year. A different averaging method must be employed if the general rule results in the distortion of asset values. Currency translation rules are provided for certain qualified business units of domestic corporations. Assets generally are characterized according to the source and type of income that they generate, have generated, or may reasonably be expected to generate. Special rules relating to asset characterization are set forth in § 1.861-12T.

Section 1.861-9T(h) describes the mechanics of the fair market value method in the case of an affiliated group electing its use. Generally, the group must determine the value of the stock of its ultimate parent, add to this amount



the annual weighted average amount of liabilities of all related persons, and determine the value of the tangible assets of all related persons. The excess of parent stock value and liabilities over tangible asset values yields the value of all intangible assets of the group and of related persons. This intangible asset is characterized by reference to the source of pre-tax net income (exclusive of passive income) before interest expense of all related persons. The value of stock in a related person is computed by adding to the value of its tangible assets its relative share of the intangible asset value (which is based on its relative share of all net income (exclusive of passive income) before interest expense of the group and of all related persons).

The Service is considering the adoption of a rule that would permit taxpayers to value their tangible assets in nonaffiliated entities by reference to their tax book value and to characterize their intangible asset value on the basis of pre-tax net income (exclusive of passive income) before interest expense of all related persons. Taxpayers are invited to comment on this proposal.

Section 1.861-9T(j) sets forth a modified gross income method for the allocation and apportionment of the interest expense of controlled foreign corporations. Generally, gross income of any higher-tier controlled foreign corporation shall include the gross income net of interest expense of any lower-tier controlled foreign corporation, subject to certain adjustments and consistency rules. This modification to a gross income method is made to conform to the section 864(e) prohibition of a gross income method for interest expense. It is designed to approximate the results of applying an asset method, which would take into account stockholdings without regard to the payment of dividends. This method avoids the administrative difficulty of applying the asset method to the assets of foreign subsidiaries.

#### *Direct Allocation of Interest Expense*

Section 1.861-10T(b) permits the direct allocation of interest expense to income generated by specific property in the case of qualified nonrecourse indebtedness. In general, qualified nonrecourse indebtedness refers to purchase money financing of certain assets that can reasonably be expected to self-finance. In order for a loan to qualify, the creditor's rights must extend only to the asset purchased, and the property may not involve significant activity on the part of the owner in order to generate income. The regulations exclude from the definition of qualified nonrecourse indebtedness transactions

that lack economic significance, transactions that involve cross collateralization, transactions involving the purchase of any financial asset, and transactions that involve interest expense constituting qualified residence interest.

Section 1.861-10T(b) also prohibits credit enhancement, except with respect to indebtedness incurred by a lessor in a leveraged lease. In addition, the regulations impose a prospective requirement that loan documents prohibit the acquisition by the holder of bond insurance or similar forms of credit enhancement in the case of all indebtedness other than the indebtedness of a lessor in a leveraged lease. The regulations identify certain common trade practices that do not constitute cross collateralization or credit enhancement.

As noted above, the Service is studying the treatment of leasing transactions in general. Although the regulations currently permit credit enhancement of the indebtedness of a lessor in a leveraged lease, it is possible that subsequent regulations might extend the prohibition on credit enhancement to include such lessor indebtedness. In that event, the prohibition would only apply on a prospective basis.

Section 1.861-10T(b) permits certain refinancings of qualified nonrecourse indebtedness as well as the refinancing of certain construction period financing. Certain assumptions of pre-existing qualified nonrecourse indebtedness are also permitted.

Section 1.861-10T(c) provides rules concerning the direct allocation of interest expense in the case of certain integrated financial transactions. In general, an integrated financial transaction is an identified borrowing used to fund a term investment in certain financial assets that may reasonably be expected to self-amortize. The borrowing and the term investment must have nearly matching dates of maturity. The term investment must not relate in any way to the taxpayer's trade or business. Financial services entities are excluded from the rule. The section also provides rules concerning the treatment of interest expense after the liquidation of the term investment.

Section 1.861-10T(d) provides special rules concerning the application of paragraphs (b) and (c) of this section. None of the rules of § 1.861-10T apply to any transaction that involves either indebtedness between related persons or indebtedness incurred from unrelated persons for the purpose of purchasing property from a related person.

Likewise, the rules of § 1.861-10T do not apply to any transaction to the extent that such transaction involves the purchase of property that is leased to related persons. In apportioning interest expense under § 1.861-9T, the value of any asset to which interest expense is directly allocated under this section shall be reduced (but not below zero) by the principal amount of the indebtedness the interest on which is so allocated.

Numerous comments were received questioning the rule of § 1.861-10T(c)(4) of the proposed regulations requiring the allocation of third party interest expense of a United States shareholder to the interest income received from related controlled foreign corporations. That rule was fashioned to address the use of loans of borrowed funds to foreign subsidiaries to achieve a substantially more favorable allocation and apportionment of interest expense than would have resulted in the case of direct borrowings by foreign subsidiaries. This more favorable treatment would encourage the use of such loans, even though other considerations, such as minimizing foreign withholding taxes and favorable local interest rates, might have dictated that the borrowing occur at the foreign subsidiary. Upon reconsideration, it has been determined that the objectives of this rule may be achieved more narrowly by eliminating any tax benefits resulting from the substantially disproportionate concentration of third party indebtedness in the United States group and that the adoption of a rule intended to prevent such concentration of third party indebtedness in the United States group is appropriate. Accordingly, § 1.861-10T(c)(4) of the proposed regulations has been modified as follows in new rules contained in § 1.861-10T(e).

Section 1.861-10T(e) provides that, if related controlled foreign corporations have excess related person indebtedness in taxable years beginning on or after January 1, 1988, an amount of interest on the third party indebtedness of the related United States shareholder in an amount equal to the interest income received on the excess related person indebtedness shall be allocated to the various separate limitation categories in proportion to the amount of related controlled foreign corporation obligations held by the related United States shareholder that is attributable to such categories. For this purpose, the obligations of related controlled foreign corporations shall be characterized in the same manner as the stock of such corporations. This specific allocation



will only occur in circumstances in which the aggregate debt-to-asset ratio of all related controlled foreign corporations is less than 80 percent of the debt-to-asset ratio of the related United States shareholder. The value of the related United States shareholder's total assets within each separate limitation category shall then be reduced by the principal amount of such shareholder's third party indebtedness the interest on which is directly allocated to such limitation category. If there is insufficient related person indebtedness to attain the required debt-to-asset ratio, certain stock in controlled foreign corporations will be treated as indebtedness for purposes of this section. Moreover, in certain cases involving disproportionate concentrations of passive assets in related controlled foreign corporations, the Commissioner may choose not to apply the rules of § 1.861-10(e) to a taxpayer.

#### *Affiliated Group Apportionment of Interest Expense*

Section 1.861-11T describes the operation of section 864(e)(1) and (5), which requires the affiliated group apportionment of interest expense. Section 1.861-11T(b) indicates that section 864(e)(1) and (5) applies to the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit), the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) or a domestic international sales corporation (DISC) (under sections 991 through 997), and in the application of section 907 for purposes of determining reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e)(1) and (5) does not apply to the computation of subpart F income of controlled foreign corporations (under sections 951 through 964), the computation of combined taxable income of a possessions corporation and its affiliates (under section 963), or the computation of effectively connected taxable income of foreign corporations. With regard to section 936 corporations, the apportionment of the affiliated group's interest expense for purposes of determining the amount of allowable credit under section 936 is governed by section 936. Any rules that are adopted under section 936(h) could result in adjustments to the allocation and apportionment of interest expense pursuant to these rules.

Section 1.861-11T(c) indicates that, except as otherwise provided, the

taxable income of each member of an affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. Stock in affiliated corporations is not taken into account in determining apportionment fractions under the asset method described in § 1.861-9T(g). In the case of an affiliated group that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502-4.

Section 1.861-11T(d) defines the term "affiliated group" to have the same meaning as is given that term by section 1504, except that section 1504(b)(4) is inapplicable. Because section 1504(b)(4) is inapplicable, section 936 corporations are included within the affiliated group for purposes of computing the apportionment fractions applicable to interest expense of other members of the group. The regulations indicate that insurance companies subject to taxation under section 801 shall only be considered to be members of the affiliated group if the parent so elects under section 1504(c)(2)(A) of the Code. Any members of an affiliated group that constitute financial corporations (as defined in the regulations) shall be treated as a separate affiliated group. In addition, a bank holding company that is regulated under the Bank Holding Company Act of 1956 is subject to special rules for purposes of segregating and apportioning its interest expense and certain of its assets between the financial and nonfinancial groups.

Under authority granted by section 7701(f), § 1.861-11T(d) further provides that certain unaffiliated corporations will be considered to constitute affiliated corporations. These corporations include any includible corporation and certain foreign corporations with effectively connected income if 80 percent of either the vote or value of all outstanding shares of such corporations are owned directly or indirectly by members of the same affiliated group.

Section 1.861-11T(e) indicates that, in the case of loans between members of an affiliated group, the indebtedness of the member borrower is not considered as an asset of the member lender. In general, a member lender shall include related person interest income in the same class of gross income as the class of gross income from which the member borrower deducts the related person interest payment. Special rules apply in

the case of loans between affiliated corporations that are financial and nonfinancial corporations (as determined under § 1.861-11T(d)), loans between affiliated corporations that generate high withholding tax interest, and certain back-to-back loans.

Section 1.861-11T(f) provides that, in the computation of the combined taxable income of any FSC or DISC and its related supplier which is a member of an affiliated group under the pricing rules of section 925 or 994, the combined taxable income of such FSC or DISC and its related supplier shall be reduced by the portion of the total interest expense of the affiliated group that is apportioned under the asset method to combined gross income from export sales involving that FSC or DISC.

Section 1.861-11T(g) addresses the problem of losses created through affiliated group apportionment in the case of an affiliated group that could, but does not, file a consolidated return or in cases where certain unaffiliated corporations are treated as members of the affiliated group under the rules of § 1.861-11T(d). Generally, section 1.1502-4 of the regulations provides for consolidated determinations of foreign tax credit limitations in the case of an affiliated group filing a consolidated return. In the case of an affiliated group that does not file a consolidated return or a group that includes an unaffiliated corporation treated as affiliated under § 1.861-11T(d), the amount of foreign tax credits allowed in any separate limitation category cannot exceed the credits computed under paragraph (g). The adjustments that may be required under paragraph (g) eliminate losses in a limitation category created within a given group member through the apportionment of interest expense and reduce income of other group members that have income in the same limitation category.

#### *Characterization Rules and Adjustments for Certain Assets*

Section 1.861-12T provides rules that apply in apportioning expenses under an asset apportionment method, including interest expenses that are required by section 864(e)(2) to be apportioned under an asset method.

Section 1.861-12T(b) provides that inventory must be characterized by reference to the source of sales income from the inventory for the year.

Section 1.861-12T(c) concerns the treatment of stock. In general, taxpayers using the tax book value must adjust the adjusted basis of stock in a 10 percent owned corporation by the amount of certain earnings and profits or any



deficit therein. This adjustment is to be made annually and is noncumulative. Subject to consistency rules, foreign corporations are permitted to use financial earnings in lieu of earnings and profits for certain pre-effective date years.

Section 1.861-12T(c) also provides rules for characterizing stock of controlled foreign corporations. Stock in a controlled foreign corporation is characterized in the hands of the United States shareholder either by reference to the assets or gross income of the controlled foreign corporation, depending on which method such corporation uses in the allocation and apportionment of its own expenses.

Section 1.861-12T(c) also provides rules concerning the treatment of stock in a noncontrolled section 902 corporation. Although the dividends from each such corporation constitute a separate limitation category, the regulations provide a special rule permitting the reallocation of interest expense that gives rise to a separate limitation loss in a noncontrolled section 902 corporation limitation category to any separate limitation category that is in excess credit, provided that such reallocation does not cause a loss in such other category. This reallocation is irrevocable and cannot be revoked by an amended return.

Section 1.861-12T(d) concerns the treatment of notes and other receivables. Notes and other receivables of affiliated corporations are not taken into account, as provided in § 1.861-9T(g). Notes of any person other than a related controlled foreign corporation are characterized by reference to the source of the interest income received. Notes of a related controlled foreign corporation are characterized according to the treatment of the interest income received, as determined under the look-through rules of section 904(d)(3)(C).

Section 1.861-12T(e) indicates that certain holders of portfolio securities that generate foreign source dividends or interest may take into account the source of gain on the disposition of such securities. These holders include holders in whose hands the securities constitute inventory and holders 80 percent of whose gross income from such securities consists of gains.

Section 1.861-12T(f) provides that, in the case of any asset in connection with which interest expense is capitalized, deferred, or disallowed under any provision, the adjusted basis or fair market value (depending on the taxpayer's choice of apportionment methods) of such an asset shall be reduced.

Section 1.861-12T(g) provides rules concerning the treatment of stock in a foreign sales corporation and the characterization assets that generate foreign trade income. Stock of a foreign sales corporation ("FSC") is generally not taken into account in apportionment of interest for foreign tax credit purposes. Because the assets of a FSC are taken into account fully in apportioning for purposes of computing FSC benefits, the Service believes there should be no secondary apportionment to FSC stock for foreign tax credit purposes.

Section 1.861-12T(j) provides rules concerning the treatment of stock in a domestic international sales corporation and the characterization of assets that generate qualified export receipts.

Section 1.861-13T (relating to transition rules) has been reserved due to the fact the transition rules for interest allocation contained in the technical corrections bill (H.R. 4333) has not yet been enacted. The Service anticipates that upon enactment of these transition rules, § 1.861-13T will be issued in a form that is substantially similar to Prop. Reg. § 1.861-11 (52 FR 34600). The primary anticipated changes in those regulations concern:

(1) The addition of a rule to clarify that, in computing the various transition amounts under Prop. Reg. §§ 1.861-11(b) and (c), any indebtedness the interest on which is directly allocated to identified property under § 1.861-8(e)(2)(iv) shall not be taken into account.

(2) The incorporation of a rule regarding the averaging of end-of-month debt levels in Prop. Reg. § 1.861-11(c)(7) for the purpose of computing the amount of a payday.

(3) The modification of the rule of Prop. Reg. § 1.861-11(g) to provide for the proration of transition attributes between a transferor and a transferee in the year of transfer, and

(4) The revision of Prop. Reg. § 1.861-11(g)(3) to provide that, when a transferee acquires stock of a corporation and the transferee or any member of its affiliated group assumes the transition qualified indebtedness of an acquired corporation, such indebtedness will continue to be transition qualified until such time as the transferee disposes of the acquired corporation, but shall thereafter cease to be transition qualified.

The regulations also amend § 1.863-3(b), *Example 2*. That example formerly provided that, in cases in which a taxpayer appropriately uses it for the computation of income from certain sales of personal property derived partly from within and partly from without the United States, taxable income shall first

be computed by deducting from the gross income derived from the sale of personal property the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861-8. The amount of taxable income is then split between domestic and foreign sources based on fractions described in paragraph (ii) of that example. Changes to this section indicate that, while the fractions are unchanged, the income derived from such sales and assets generating such income are to be split prior to the allocation and apportionment of expenses to gross income in order to avoid complication in the apportionment of interest and other expenses definitely related to all income. No other change to the provisions of this example is intended. Thus, for purposes of *Example 2*, expenses that are allocable to the generation of section 863(b) income cannot be directly allocated to either the foreign or domestic portion thereof but remain equally allocable to both.

#### *Affiliated Group Allocation and Apportionment of Expenses Other Than Interest*

Section 1.861-14T describes the operation of section 864(e)(6), which requires the affiliated group allocation and apportionment of expenses, other than interest, which are not directly allocable and apportionable to any specific income producing activity or property. Section 1.861-14T(a) outlines the contents of § 1.861-14T and provides that § 1.861-14T applies in general to taxable years beginning after December 31, 1986. Section 1.861-14T(b) describes the operative sections to which section 864(e)(6) applies. These are the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit), the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) or a domestic international sales corporation (DISC) (under sections 991 through 997), and the application of section 907 for purposes of determining reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e)(6) does not apply to the computation of subpart F income of controlled foreign corporations (under sections 951 through 964) or the computation of effectively connected taxable income of foreign corporations. The application of section 864(e)(6) in connection with section 936 corporations is reserved.



Section 1.861-14T(c) states that the taxable income of each member of an affiliated group shall be determined by allocating and apportioning the expenses described in § 1.861-14T(e) of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. For this purpose, interaffiliate transactions are eliminated. In cases in which an asset method of apportionment is used, stock in affiliated corporations is not taken into account and loans between members of the affiliated group are treated in accordance with § 1.861-11T(e). In the case of an affiliated group that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502-4. A special rule is provided in the case of expenses incurred by one member of an affiliated group that relate to the gross income of some, but not all, other members of the affiliated group. Such expenses are to be apportioned only on the basis of apportionment factors derived from the member incurring such expenses and from those other members to which the expense relates. In other words, only such members (and not all members) are treated as a single taxpayer for purposes of apportionment of such expense. In addition, paragraph (c) makes clear that, if section 482 is applied, adjustment of income and expense among members of the group pursuant to section 482 is to be made prior to the allocation and apportionment of expenses under the rule of paragraph (c).

Section 1.861-14T(d) defines the term "affiliated group" to have the same meaning as is given that term by section 1504, except that section 1504(b)(4) is inapplicable. Because section 1504(b)(4) is inapplicable, section 936 corporations are included within the affiliated group for purposes of computing the apportionment fractions applicable to expenses of other members of the group. In addition, financial corporations, which are treated as a separate affiliated group for purposes of the allocation and apportionment of interest expense under section 864(e)(5) and § 1.861-11T(d), are included within the affiliated group for purposes of the allocation and apportionment of expenses other than interest. Life insurance companies taxable under section 801 are included in an affiliated group consisting in part of other companies only if an election is made under section 1504(c)(2)(A).

Section 1.861-14T(e) describes the expenses that are subject to allocation

and apportionment under the rules of paragraph (c). In general, the expenses to which paragraph (c) relates do not include interest expense or any other expense which is directly allocable to specific income producing activities or property of the member of the affiliated group that incurred the expense. An expense is considered to be directly allocable to specific income producing activities or property of the member incurring the expense if, taking into account the income of all members of the affiliated group, the expense is considered definitely related within the meaning of § 1.861-8(b)(2) solely to gross income derived by the member incurring the expense. Thus, the rules of paragraph (c) apply to the expenses of supportive functions, such as general and administrative expenses, to certain research and experimental expenses (not subject to allocation to U.S. sources under the statutory moratorium), to certain stewardship expenses, and to certain generalized legal and accounting expenses. Proposed legislation currently under consideration by Congress may affect the treatment of research and experimental expenses under this proposed regulation. This proposed regulation will be changed, if necessary, to conform to that legislation upon its enactment.

Section 1.861-14T(f) provides that the combined taxable income of a FSC or DISC and its related supplier shall be reduced by the portion of the expenses of the affiliated group described in paragraph (e) that is incurred in connection with export sales involving that FSC or DISC. Under this rule, expenses of other group members may be attributed to the combined taxable income of a FSC or DISC and its related supplier without affecting the amount of expenses otherwise deductible (other than any commission payable by the related supplier to the FSC or DISC) by the FSC, DISC, related supplier, and other members of the affiliated group. The FSC or DISC is entitled to its statutory portion of the combined taxable income, after reduction by any apportioned group expense, for purposes of determining the transfer price of export property sold by the related supplier to a buy-sell FSC or DISC or the commission paid by the related supplier to a commission FSC or DISC.

Section 1.861-14T(g), by incorporating by cross-reference the rules of proposed § 1.861-11T(g), addresses the problem of losses created through affiliated group apportionment in the case of an affiliated group that could, but does not, file a consolidated return. Generally, § 1.1502-4 of the regulations provides for

consolidated determinations of foreign tax credit limitations in the case of an affiliated group filing a consolidated return. In the case of an affiliated group that does not file a consolidated return, the amount of foreign tax credits allowed in any separate limitation category cannot exceed the credits computed as required by paragraph (g). In general, paragraph (g) requires adjustments to eliminate losses in a limitation category created through the apportionment of expense and correspondingly reduces income of other group members that have income in the same limitation category.

Section 1.861-14T(h) provides special rules concerning the allocation of reserve expenses of a life insurance company.

Section 1.861-14T(j) provides examples illustrating the application of the rules of this section.

### Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. § 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

### Drafting Information

The principal author of the regulations relating to the allocation and apportionment of interest expense is David Merrick, and the principal author of the regulations relating to the allocation and apportionment of certain expenses other than interest is Carl Cooper, both of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations.

### List of Subjects

26 CFR 1.861-1 to 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, United States investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.



### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 602, and Subchapter G is amended as follows:

### Income Tax Regulations

**Paragraph 1.** The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. \* \* \* Sections 1.861-8T through 1.861-14T also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).

**Par. 2.** Section 1.861-8 is amended as follows:

1. By removing the last sentence of § 1.861-8(a)(2),
2. By revising paragraph (b)(3),
3. By redesignating existing paragraph (c)(2) as paragraph (c)(3) and adding a new paragraph (c)(2),
4. By revising paragraphs (c)(1), (d)(2), and (f)(1)(iii),
5. By removing *Examples* (1) and (2) of paragraph (g) and reserving those examples, and
6. By revising *Example* (24) of paragraph (g).

**§ 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.**

(b) *Allocation.*

(3) *Supportive functions.* [Reserved] For guidance, see § 1.861-8T(b)(3).

(c) *Apportionment of deductions—(1) Deductions definitely related to a class of gross income.* [Reserved] For guidance, see § 1.861-8T(c)(1).

(2) *Apportionment based on assets.* [Reserved] For guidance, see § 1.861-8T(c)(2).

(d) *Excess of deductions and excluded and eliminated income.*

(2) *Allocation and apportionment to exempt, excluded, or eliminated income.* [Reserved] For guidance, see § 1.861-8T(d)(2).

(e) *Allocation and apportionment of certain deductions.*

(2) *Interest.* [Reserved] For guidance, see § 1.861-8T(e)(2).

(f) *Miscellaneous matters—(1) Operative sections.*

(iii) *DISC taxable income.* [Reserved] For guidance, see § 1.861-8T(f)(1)(iii).

(g) *General examples.*

*Example* (1). [Reserved]

*Example* (2). [Reserved]

*Example* (24). [Reserved] For guidance, see § 1.861-8T(g) *Example* 24.

**Par. 3.** A new § 1.861-8T is added immediately after § 1.861-8 to read as follows:

**§ 1.861-8T Computation of taxable income from sources within the United States and from other sources and activities. (Temporary).**

(a) *In general.*

(1) [Reserved]

(2) *Allocation and apportionment of deductions in general.* If an affiliated group of corporations joins in filing a consolidated return under section 1501, the provisions of this section are to be applied separately to each member in that affiliated group for purposes of determining such member's taxable income, except to the extent that expenses, losses, and other deductions are allocated and apportioned as if all domestic members of an affiliated group were a single corporation under section 864(e) and the regulations thereunder. See § 1.861-9T through § 1.861-11T for rules regarding the affiliated group allocation and apportionment of interest expense, and § 1.861-14T for rules regarding the affiliated group allocation and apportionment of expenses other than interest.

(3) through (5) [Reserved]

(b) *Allocation.*

(1) and (2) [Reserved]

(3) *Supportive functions.* Deductions which are supportive in nature (such as overhead, general and administrative, and supervisory expenses) may relate to other deductions which can more readily be allocated to gross income. In such instance, such supportive deductions may be allocated and apportioned along with the deductions to which they relate. On the other hand, it would be equally acceptable to attribute supportive deductions on some reasonable basis directly to activities or property which generate, have generated, or could be reasonably expected to generate gross income. This would ordinarily be accomplished by allocating the supportive expenses to all gross income or to another broad class of gross income and apportioning the expenses in accordance with paragraph (c)(1) of this section. For this purpose, reasonable departmental overhead rates may be utilized. For examples of the application of the principles of this paragraph (b)(3) other than to expenses attributable to stewardship activities, see examples (19) through (21) of paragraph (g) of this section. See

paragraph (e)(4) of this section for the allocation and apportionment of deductions attributable to stewardship activities. However, supportive deductions that are described in § 1.861-14T(e)(3) shall be allocated and apportioned in accordance with the rules of § 1.861-14T and shall not be allocated and apportioned by reference only to the gross income of a single member of an affiliated group of corporations as defined in § 1.861-14T(d).

(4) and (5) [Reserved]

(c) *Apportionment of deductions—(1) Deductions definitely related to a class of gross income.* Where a deduction has been allocated in accordance with paragraph (b) of this section to a class of gross income which is included in one statutory grouping and the residual grouping, the deduction must be apportioned between the statutory grouping and the residual grouping. Where a deduction has been allocated to a class of gross income which is included in more than one statutory grouping, such deduction must be apportioned among the statutory groupings and, where necessary, the residual grouping. Thus, in determining the separate limitations on the foreign tax credit imposed by section 904(d)(1) or by section 907, the income within a separate limitation category constitutes a statutory grouping of income and all other income not within that separate limitation category (whether domestic or within a different separate limitation category) constitutes the residual grouping. In this regard, the same method of apportionment must be used in apportioning a deduction to each separate limitation category. Also, see paragraph (f)(1)(iii) of this section with respect to the apportionment of deductions among the statutory groupings designated in section 904(d)(1). If the class of gross income to which a deduction has been allocated consists entirely of a single statutory grouping or the residual grouping, there is no need to apportion that deduction. If a deduction is not definitely related to any gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section. A deduction is apportioned by attributing the deduction to gross income (within the class to which the deduction has been allocated) which is in one or more statutory groupings and to gross income (within the class) which is in the residual grouping. Such attribution must be accomplished in a manner which reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross



income. In apportioning deductions, it may be that for the taxable year there is no gross income in the statutory grouping or that deductions will exceed the amount of gross income in the statutory grouping. See paragraph (d)(1) of this section with respect to cases in which deductions exceed gross income. In determining the method of apportionment for a specific deduction, examples of bases and factors which should be considered include, but are not limited to—

- (i) Comparison of units sold,
- (ii) Comparison of the amount of gross sales or receipts,
- (iii) Comparison of costs of goods sold,
- (iv) Comparison of profit contribution,
- (v) Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise to the class of gross income, and
- (iv) Comparison of the amount of gross income.

Paragraph (e) (2) through (8) of this section provides the applicable rules for allocation and apportionment of deductions for interest, research and development expenses, and certain other deductions. The effects on tax liability of the apportionment of deductions and the burden of maintaining records not otherwise maintained and making computations not otherwise made shall be taken into consideration in determining whether a method of apportionment and its application are sufficiently precise. A method of apportionment described in this paragraph (c)(1) may not be used when it does not reflect, to a reasonably close extent, the factual relationship between the deduction and the groupings of income. Furthermore, certain methods of apportionment described in this paragraph (c)(1) may not be used in connection with any deduction for which another method is prescribed. The principles set forth above are applicable in apportioning both deductions definitely related to a class which constitutes less than all of the taxpayer's gross income and to deductions related to all of the taxpayer's gross income. If a deduction is not related to any class of gross income, it must be apportioned ratably as provided in paragraph (c)(3) of this section.

(2) *Apportionment based on assets.* Certain taxpayers are required by paragraph (e)(2) of this section and § 1.861-9T to apportion interest expense on the basis of assets. A taxpayer may apportion other deductions based on the

comparative value of assets that generate income within each grouping, provided that such method reflects the factual relationship between the deduction and the groupings of income and is applied in accordance with the rules of § 1.861-9T(g). In general, such apportionments must be made either on the basis of the tax book value of those assets or on their fair market value. However, once the taxpayer uses fair market value, the taxpayer and all related persons must continue to use such method unless expressly authorized by the Commissioner to change methods. For purposes of this paragraph (c)(2) the term "related persons" means two or more persons in a relationship described in section 267(b). In determining whether two or more corporations are members of same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned by the application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3). In the case of any corporate taxpayer that—

- (i) Uses tax book value, and
- (ii) Owns directly or indirectly (within the meaning of § 1.861-11T(b)(2)(ii)) 10 percent or more of the total combined voting power of all classes of stock entitled to vote in any other corporation (domestic or foreign) that is not a member of the affiliated group (as defined in section 864(e)(5)), such taxpayer shall adjust its basis in that stock in the manner described in § 1.861-11T(b).

(3) [Reserved]  
(d) *Excess of deductions and excluded and eliminated items of income.*

- (1) [Reserved]
- (2) *Allocation and apportionment to exempt, excluded or eliminated income—*(i) *In general.* In the case of taxable years beginning after December 31, 1986, except to the extent otherwise permitted by § 1.861-13T, the following rules shall apply to take account of income that is exempt of excluded, or assets generating such income, with respect to allocation and apportionment of deductions.

(A) *Allocation of deductions.* In allocating deductions that are definitely related to one or more classes of gross income, exempt income (as defined in paragraph (d)(2)(ii) of this section) shall be taken into account.

(B) *Apportionment of deductions.* In apportioning deductions that are definitely related either to a class of gross income consisting of multiple groupings of income (whether statutory or residual) or to all gross income, exempt income and exempt assets (as defined in paragraph (d)(2)(ii) of this section) shall not be taken into account.

For purposes of apportioning deductions which are not taken into account under § 1.1502-13(c)(2) in determining gain or loss from deferred intercompany transactions, as defined in § 1.1502-13(a)(2), income from such transactions shall be taken into account in the year such income is ultimately included in gross income.

(ii) *Exempt income and exempt asset defined—*(A) *In general.* For purposes of this section, the term "exempt income" means any income that is, in whole or in part, exempt, excluded, or eliminated for federal income tax purposes. The term "exempt asset" means any asset the income from which is, in whole or in part, exempt, excluded, or eliminated for federal tax purposes.

(B) *Certain stock and dividends.* The term "exempt income" includes the portion of the dividends that are deductible under—

- (1) Section 243(a) (1) or (2) (relating to the dividends received deduction),
- (2) Section 245(a) (relating to the dividends received deduction for dividends from certain foreign corporations).

Thus, for purposes of apportioning deductions using a gross income method, gross income would not include a dividend to the extent that it gives rise to a dividend received deduction under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case of a life insurance company taxable under section 801, the amount of such stock that is treated as tax exempt shall not be reduced because a portion of the dividends received deduction is disallowed as attributable to the policyholder's share of such dividends. See § 1.861-14T(h) for a special rule concerning the allocation of reserve expenses of a life insurance company. In addition, for purposes of apportioning deductions using an asset method, assets would not include that portion of stock equal to the portion of dividends paid thereon that would be deductible under either section 243(a)(1), section 243(a)(2), or section 245(a). In the case of stock which generates, has generated, or can reasonably be expected to generate qualifying dividends deductible under section 243(a)(3), such stock shall not constitute a tax exempt asset. Such



stock and the dividends thereon will, however, be eliminated from consideration in the apportionment of interest expense under the consolidation rule set forth in § 1.861-10T(c), and in the apportionment of other expenses under the consolidation rules set forth in § 1.861-14T.

(iii) *Income that is not considered tax exempt.* The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;

(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC;

(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a possessions corporation and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and

(D) Foreign earned income as defined in section 911 and the regulations thereunder (however, the rules of § 1.911-6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6)).

(iv) *Prior years.* For expense allocation and apportionment rules applicable to taxable years beginning before January 1, 1987, and for later years to the extent permitted by § 1.861-13T, see § 1.861-8(d)(2) (Revised as of April 1, 1986).

(e) *Allocation and apportionment of certain deductions.*

(1) [Reserved]

(2) *Interest.* The rules concerning the allocation and apportionment of interest expense and certain interest equivalents are set forth in §§ 1.861-9T through 1.861-13T.

(3) through (11) [Reserved]

(f) *Miscellaneous matters—(1)*

*Operative sections.*

(1) through (1)(ii) [Reserved]

(iii) *Separate limitations to the foreign tax credit.* Section 904(d)(1) requires that the foreign tax credit limitation be determined separately in the case of the types of income specified therein. Accordingly, the income within each separate limitation category constitutes a statutory grouping of income and all other income not within that separate limitation category (whether domestic or within a different separate limitation category) constitutes the residual groups.

(f) (1)(iv) through (5) [Reserved]

(g) *General examples.*

*Examples (1) through (23).* [Reserved]

*Example (24)—Exempt, excluded, or eliminated income—(i) Income method—(A) Facts.* X, a domestic corporation organized on January 1, 1987, is engaged in a number of businesses worldwide. X owns a 25-percent voting interest in each of five corporations engaged in the business A, two of which are domestic and three of which are foreign. X incurs stewardship expenses in connection with these five stock investments in the amount of \$100. X apportions its stewardship expenses using a gross income method. Each of the five companies pays a dividend in the amount of \$100. X is entitled to claim the 80-percent dividends received deduction on dividends paid by the two domestic companies. Because tax exempt income is considered in the allocation of deductions, X's \$100 stewardship expense is allocated to the class of income consisting of dividends from business A companies. However, because tax exempt income is not considered in the apportionment of deductions within a class of gross income, the gross income of the two domestic companies must be reduced to reflect the availability of the dividends received deduction. Thus, for purposes of apportionment, the gross income paid by the three foreign companies is considered to be \$100 each, while the gross income paid by the domestic companies is considered to be \$20

each. Accordingly, X has total gross income from business A companies, for purposes of apportionment, of \$340. As a result, \$29.41 of X's stewardship expense is apportioned to each of the foreign companies and \$5.88 of X's stewardship expense is apportioned to each of the domestic companies.

(ii) *Asset method—(A) Facts.* X, a domestic corporation organized on January 1, 1987, carries on a trade or business in the United States. X has deductible interest expense incurred in 1987 of \$60,000. X owns all the stock of Y, a foreign corporation. X also owns 49 percent of the voting stock of Z, a domestic corporation. Neither Y nor Z has retained earnings and profits at the end of 1987. X apportions its interest expense on the basis of the fair market value of its assets. X has assets worth \$1,500,000 that generate domestic source income, among which are tax exempt municipal bonds worth \$100,000, and the stock of Z, which has a value of \$500,000. The Y stock owned by X has a fair market value of \$2,000,000 and generates solely foreign source general limitation income.

(B) *Allocation.* No portion of X's interest expense is directly allocable solely to identified property within the meaning of § 1.861-10T. Thus, X's deduction for interest is definitely related to all its gross income as a class.

(C) *Apportionment.* For purposes of apportioning expenses, assets that generate exempt, eliminated, or excluded income are not taken into account. Because X's municipal bonds are tax exempt, they are not taken into account in apportioning interest expense. Since X is entitled to claim under section 243 to 80-percent dividends received deduction with respect to the dividend it received from Z, 80 percent of the value of that stock is not taken into account as an asset for purposes of apportionment under the asset method. X apportions its interest deduction between the statutory grouping of foreign source general limitation income and the residual grouping of domestic source income as follows:

To foreign source general limitation income:

$$\text{Interest expense} \times \frac{\text{General limitation assets that are not tax exempt}}{\text{Worldwide assets that are not tax exempt}}$$

$$\$60,000 \times \frac{\$2,000,000}{(\$100,000 + \$900,000 + \$2,000,000)} = \$40,000$$

#### Nonexempt foreign assets

20 percent of Z stock value	+	Nonexempt domestic assets	+	Nonexempt foreign assets
-----------------------------------	---	---------------------------------	---	--------------------------------

#### To domestic source income:

Interest expense	×	$\frac{\text{Domestic assets that are nottax exempt}}{\text{Worldwide assets that are nottax exempt}}$
---------------------	---	--



$$\begin{aligned} & \$60,000 \times \frac{\$100,000 + \$900,000}{(\$100,000 + \$900,000 + \$2,000,000)} = \$20,000 \end{aligned}$$

20 percent of Z stock value + nonexempt domestic assets

20 percent of Z stock value	+	Nonexempt domestic assets	+	Nonexempt foreign assets
-----------------------------------	---	---------------------------------	---	--------------------------------

Example (25) and (26). [Reserved]

(h) *Effective dates.* In general, the rules of this section, as well as the rules of §§ 1.861-9T, 1.861-10T, 1.861-11T, 1.861-12T, and 1.861-14T shall apply for taxable years beginning after December 31, 1986. In the case of corporate taxpayers, transition rules set forth in § 1.861-13T provide for the gradual phase-in of certain the provisions of this and the foregoing sections. However, the following rules are effective for taxable years commencing after December 31, 1988:

(1) Section 1.861-9T(b)(2) (concerning the treatment of certain foreign currency borrowings).

(2) Section 1.861-9T(d)(2) (concerning the treatment of interest incurred by nonresident aliens).

(3) Section 1.861-10T(b)(3)(ii) (providing an operating costs test for purposes of the nonrecourse indebtedness exception), and

(4) Section 1.861-10T(b)(6) (concerning excess collateralization of nonrecourse borrowings).

In addition, § 1.861-10T(e) (concerning the treatment of related controlled foreign corporation indebtedness) is effective for taxable years commencing after December 31, 1987. For rules for taxable years beginning before January 1, 1987, and for later years to the extent permitted by § 1.861-13T, see § 1.861-8 (Revised as of April 1, 1986).

§§ 1.861-9 and 1.861-9A [Redesignated as §§ 1.861-15 and 1.861-16 respectively]

Par. 4. Sections 1.861-9 and 1.861-9A are redesignated as §§ 1.861-15 and 1.861-16, respectively.

Par. 5. The following new §§ 1.861-9T, 1.861-10T, 1.861-11T, 1.861-12T and 1.861-14T are added immediately after § 1.861-8T and § 1.861-13T is added and reserved to read as follows:

§ 1.861-9T Allocation and apportionment of interest expense (Temporary regulations).

(a) *In general.* Any expense that is deductible under section 163 (including original issue discount) constitutes interest expense for purposes of this section, as well as for purposes of

§§ 1.861-10T, 1.861-11T, 1.861-12T, and 1.861-13T. The term interest refers to the gross amount of interest expense incurred by a taxpayer in a given tax year. The method of allocation and apportionment for interest set forth in this section is based on the approach that, in general, money is fungible and that interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. Exceptions to the fungibility rule are set forth in § 1.861-10T. The fungibility approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds. When borrowing will generally free other funds for other purposes, and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes. Consistent with the principles of fungibility, except as otherwise provided, the aggregate of deductions for interest in all cases shall be considered related to all income producing activities and assets of the taxpayer and, thus, allocable to all the gross income which the assets of the taxpayer generate, have generated, or could reasonably have been expected to generate. In the case of the interest expense of members of an affiliated group, interest expense shall be considered to be allocable to all gross income of the members of the group under § 1.861-11T. That section requires the members of an affiliated group to allocate and apportion the interest expense of each member of the group as if all members of such group were a single corporation. For the method of determining the interest deduction allowed to foreign corporations under section 882(c), see § 1.882-5.

(b) *Interest equivalents.*—(1) *Certain expenses and losses.* Any expense or loss (to the extent deductible) incurred in a transaction or series of integrated or related transactions in which the taxpayer secures the use of funds for a period shall be subject to allocation and apportionment under the rules of this section if such expense or loss is substantially incurred in consideration of the time value of money. However, the allocation and apportionment of a loss under this paragraph (b) shall not affect the characterization of such loss as capital or ordinary for other purposes of the Code and the regulations thereunder. The rule of this paragraph

(b)(1) may be illustrated by the following example.

*Example.* W, a domestic corporation, borrows from X two ounces of gold at a time when the spot price for gold is \$500 per ounce. W agrees to return the two ounces of gold in six months. W sells the two ounces of gold to Y for \$1000. W then enters into a contract with Z to purchase two ounces of gold six months in the future for \$1,050. In exchange for the use of \$1,000 in cash, W has sustained a loss of \$50 on related transactions. This loss is subject to allocation and apportionment under the rules of this section in the same manner as interest expense.

(2) *Certain foreign currency borrowings.*—(i) *Rule.* If a taxpayer borrows in a nonfunctional currency at a rate of interest that is less than the applicable federal rate (or its equivalent in functional currency if the functional currency is not the dollar), any swap, forward, future, option, or similar financial arrangement (or any combination thereof) entered into by the taxpayer or by a related person (as defined in § 1.861-8T(c)(2)) that exists during the term of the borrowing and that substantially diminishes currency risk with respect to the borrowing or interest expense thereon will be presumed to constitute a hedge of such borrowing, unless the taxpayer can demonstrate on the basis of facts and circumstances that the two transactions are in fact unrelated. Under this presumption, the currency loss incurred on the borrowing during taxable years beginning after December 31, 1988, in connection with hedged nonfunctional currency borrowings, reduced or increased by the gain or loss on the hedge, will be apportioned in the same manner as interest expense. This presumption can be rebutted by a showing that the financial arrangement was entered into in connection with hedging currency exposure arising in the ordinary course of a trade or business (other than with respect to the borrowing).

(ii) *Examples.* The principles of this paragraph (b)(2) may be illustrated by the following examples.

*Example (1).* Taxpayer has a dollar functional currency and does not have any qualified business units with a functional currency other than the dollar. On January 1, 1989, when the unit of foreign currency is worth \$1, taxpayer borrows 100 units of foreign currency for a three-year period bearing interest at the annual rate of 3



percent and immediately converts the proceeds of the borrowing into dollars for use in its business. In the ordinary course of its business, taxpayer has no foreign currency exposure in this currency. In March 1989, taxpayer enters into a three-year swap agreement that covers most, but not all, of the payment of interest and principal. Because the swap substantially diminishes currency risk with respect to the borrowing, it is presumed to hedge the loan. Since taxpayer cannot demonstrate that it was hedging currency exposure arising in the ordinary course of its business (other than currency exposure with respect to the borrowing), the net currency loss on the borrowing adjusted for any gain or loss on the swap must be apportioned in the same manner as interest expense.

**Example (2).** Assume the same facts as in Example 1, except that the taxpayer borrows in two separate foreign currencies on terms described in Example 1 and enters into a swap agreement in a single currency that substantially diminishes the taxpayer's aggregate foreign currency risk. The net currency loss on the borrowings adjusted for any gain or loss on the swap must be apportioned in the same manner as interest expense.

**(3) Losses on sale of certain receivables—(1) General rule.** Any loss on the sale of a trade receivable (as defined in § 1.954-2(h)) shall be allocated and apportioned, solely for purposes of this section and §§ 1.861-10T, 1.861-11T, 1.861-12T, and 1.861-13T, in the same manner as interest expense, unless at the time of sale of the receivable, it bears interest at a rate which is at least 120 percent of the short term applicable federal rate (as determined under section 1274(d) of the Code), or its equivalent in foreign currency in the case of receivables denominated in foreign currency, determined at the time the receivable arises. This treatment shall not affect the characterization of such expense as interest for other purposes of the Internal Revenue Code.

**(ii) Exceptions.** To the extent that a loss on the sale of a trade receivable exceeds the discount on the receivable that would be computed applying to the amount received on the sale of the receivable 120 percent of the applicable federal rate (or its equivalent in foreign currency in the case of receivables denominated in foreign currency) for the period commencing with the date on which the receivable is sold and ending with the earlier of the date on which the receivable begins to bear interest at such rate or the anticipated payment date of the receivable, such excess shall not be allocated and apportioned in the same manner as interest expense but rather shall be allocated and apportioned to the gross income generated by the receivable. In cases of

transfers of receivables to a domestic international sales corporation described § 1.994-1(c)(6)(v), the rule of this paragraph (b)(3) shall not apply for purposes of computing combined taxable income. In computing the combined taxable income of a foreign sales corporation and its related supplier, loss on the sale of receivables to a third party incurred either by the foreign sales corporation or its related supplier shall offset combined taxable income, notwithstanding the provisions of this paragraph (b)(3). See § 1.924(a)-1T(g)(7).

**Example.** On October 1, X sells a widget to Y for \$100 payable in 30 days, after which the receivable will bear stated interest at 13 percent. On October 4, X sells Y's obligation to Z for \$98. Assume that the applicable federal rate for the month of October is 10 percent. Applying 120 percent of the applicable federal rate to the \$98 received on the sale of the receivable, the obligation is discounted at a 12 percent rate for a period of 27 days. At this discount rate, the obligation would have sold for \$99.22. Thus, 88 cents of the \$2 loss on the sale is apportioned in the same manner as interest expense, and \$1.22 of the \$2 loss on the sale is directly allocated to the income generated on the widget sale.

**(4) Rent in certain leasing transactions.** [Reserved.]

**(5) Treatment of bond premium—(i) Treatment by the issuer.** If a bond or other debt obligation is issued at a premium, an amount of interest expense incurred by the issuer on that bond or other debt obligation equal to the amortized portion of that premium that is included in gross income for the year shall be allocated and apportioned solely to the amortized portion of premium derived by the issuer for the year.

**(ii) Treatment by the holder.** If a bond or debt obligation is purchased at a premium, the portion of that premium amortized during the year by the holder under section 171 and the regulations thereunder shall be allocated and apportioned solely to interest income derived from the bond by the holder for the year.

**(c) Allowable deductions.** In order for an interest expense to be allocated and apportioned, it must first be determined that the interest expense is currently deductible. A number of provisions in the Code disallow or suspend deductions of interest expense or require the capitalization thereof.

**(1) Disallowed deductions.** A taxpayer does not allocate and apportion interest expense under this section that is permanently disallowed as a deduction by operation of section 163(h), section 265, or any other provision or rule that permanently disallows the deduction of interest expense.

**(2) Section 263A.** Section 263A requires the capitalization of interest expense that is allocable to designated types of property. Any interest expense that is capitalized under section 263A does not constitute deductible interest expense for purposes of this section. Furthermore, interest expense capitalized in inventory or depreciable property is not separately allocated and apportioned when the inventory is sold or depreciation is allowed. Capitalized interest expense is effectively allocated and apportioned as part of, and in the same manner as, the cost of goods sold, amortization, or depreciation deduction.

**(3) Section 163(d).** Section 163(d) suspends the deduction for interest expense to the extent that it exceeds net investment income. In the year that suspended investment interest expense becomes allowable under the rules of section 163(d), that interest expense is apportioned under rules set forth in paragraph (d)(1) of this section as though it were incurred in the taxable year in which the expense is deducted.

**(4) Section 469—(i) General rule.** Section 469 suspends the deduction of passive activity losses to the extent that they exceed passive activity income for the year. Passive activity losses may consist in part of interest expense properly allocable to passive activity. In the year that suspended interest expense becomes allowable as a deduction under the rules of section 469, that interest expense is apportioned under rules set forth in paragraph (d)(1) of this section as though it were incurred in the taxable year in which the expense is deducted.

**(ii) Identification of the interest component of a suspended passive loss.** A suspended passive loss may consist of a variety of items of expense other than interest expense. Suspended interest expense for any taxable year is computed by multiplying the total suspended passive loss for the year by a fraction, the numerator of which is passive interest expense for the year (determined under regulations issued under section 163) and the denominator of which is total passive expenses for the year. The amount of the suspended interest expense that is considered to be deductible in a subsequent taxable year is computed by multiplying the amount of any cumulative suspended interest expense (reduced by suspended interest expense allowed as a deduction in prior taxable years) times a fraction, the numerator of which is the portion of cumulative suspended passive losses that become deductible in the taxable year and the denominator of which is the cumulative suspended passive



losses for prior taxable years (reduced by suspended passive losses allowed as deductions in prior taxable years).

(iii) *Example.* The rules of this paragraph (c)(4) may be illustrated by the following example.

*Example.* On January 1, 1987, A, a United States citizen, invested in a passive activity. In 1987, the passive activity generated no passive income and \$100 in passive losses, all of which were suspended by operation of section 469. The suspended loss included \$10 of suspended interest expense. In 1988, the passive activity generated \$50 in passive income and \$150 in passive expenses which included \$30 of interest expense. The entire \$100 passive loss was suspended in 1988 and included \$20 of interest expense (\$100 suspended passive loss  $\times$  \$30 passive interest expense/\$150 total passive expenses). Thus, at the end of 1988, A had total suspended passive losses of \$200, including \$30 of suspended interest expense. In 1989, the passive activity generated \$100 in passive income and no passive expenses. Thus, \$100 of A's cumulative suspended passive loss was therefore allowed in 1989. The \$100 of deductible passive loss includes \$15 of suspended interest expense (\$30 cumulative suspended interest expense  $\times$  \$100 of cumulative suspended passive losses allowable in 1989/\$200 of total cumulative suspended passive losses). The \$15 of interest expense is apportioned under the rules of paragraph (d) of this section as though it were incurred in 1989.

(d) *Apportionment rules for individuals, estates, and certain trusts—*

(1) *United States individuals.* In the case of taxable years beginning after December 31, 1986, individuals generally shall apportion interest expense under different rules according to the type of interest expense incurred. The interest expense of individuals shall be characterized under the regulations issued under section 163. However, in the case of an individual whose foreign source income (including income that is excluded under section 911) does not exceed a gross amount of \$5,000, the apportionment of interest expense under this section is not required. Such an individual's interest expense may be allocated entirely to domestic source income.

(i) *Interest incurred in the conduct of a trade or business.* An individual who incurs business interest described in section 163(h)(2)(A) shall apportion such interest expense using an asset method by reference to the individual's business assets.

(ii) *Investment interest.* An individual who incurs investment interest described in section 163(h)(2)(B) shall apportion that interest expense on the basis of the individual's investment assets.

(iii) *Interest incurred in a passive activity.* An individual who incurs

passive activity interest described in section 163(h)(2)(C) shall apportion that interest expense on the basis of the individual's passive activity assets. Individuals who receive a distributive share of interest expense incurred in a partnership are subject to special rules set forth in paragraph (e) of this section.

(iv) *Qualified residence and deductible personal interest.* Individuals who incur qualified residence interest described in section 163(h)(2)(D) shall apportion that interest expense under a gross income method, taking into account all income (including business, passive activity, and investment income) but excluding income that is exempt under section 911. For purposes of this section, any qualified residence that is rented shall be considered to be a business asset for the period in which it is rented, with the result that the interest on such a residence is not apportioned under this subdivision (iv) but instead under subdivisions (i) or (iii) of this paragraph (d)(1). To the extent that personal interest described in section 163(h)(2) remains deductible under transitional rules, individuals shall apportion such interest expense in the same manner as qualified residence interest.

(v) *Example.* The following example illustrates the principles of this section.

*Example—(i) Facts.* A is a resident individual taxpayer engaged in the active conduct of a trade or business, which A operates as a sole proprietor. A's business generates only domestic source income. A's investment portfolio consists of several less than 10 percent stock investments. Certain stocks in which A's adjusted basis is \$40,000 generate domestic source income and other stocks in which A's adjusted basis is \$60,000 generate foreign source passive income. In addition, A owns his personal residence, which is subject to a mortgage in the amount of \$100,000. All interest expense incurred with respect to A's mortgage is qualified residence interest for purposes of section 163(h)(2)(D). A's other indebtedness consists of a bank loan in the amount of \$40,000. Under the regulations issued under section 163(h), it is determined that the proceeds of the \$40,000 loan were divided equally between A's business and his investment portfolio. In 1987, the gross income of A's business, before the apportionment of interest expense, was \$50,000. A's investment portfolio generated \$4,000 in domestic source income and \$6,000 in foreign source passive income. All of A's debt obligations bear interest at the annual rate of 10 percent.

(ii) *Analysis of business interest.* Under section 163(h) of the Code, \$2,000 of A's interest expense is attributable to his business. Under the rules of paragraph (d)(1)(i), such interest must be apportioned on the basis of the business assets. Applying the asset method described in paragraph (g) of this section, it is determined that all of A's business assets generate domestic income

and, therefore, constitute domestic assets. Thus, the \$2,000 in interest expense on the business loan is allocable to domestic source income.

(iii) *Analysis of investment interest.* Under section 163(h) of the Code, \$2,000 of A's interest expense is investment interest. Under the rules of paragraph (d)(1)(ii) of this section, such interest must be apportioned on the basis of investment assets. Applying the asset method, A's investment assets consist of stock generating domestic source income with an adjusted basis of \$40,000 and stock generating foreign source passive income with an adjusted basis of \$60,000. Thus, 40 percent (\$800) of A's investment interest is apportioned to domestic source income and 60 percent (\$1,200) of A's investment interest is apportioned to foreign source passive income for purposes of section 904.

(iv) *Analysis of qualified residence interest.* The \$10,000 of qualified residence interest expense is apportioned under the rules of paragraph (d)(1)(iv) of this section on the basis of all of A's gross income. A's gross income consists of \$60,000, \$54,000 of which is domestic source and \$6,000 of which is foreign source passive income. Thus, \$9,000 of A's qualified residence interest is apportioned to domestic source income and \$1,000 of A's qualified residence interest is apportioned to foreign source passive income.

(2) *Nonresident aliens—(i) General rule.* For taxable years beginning on or after January 1, 1988, interest expense incurred by a nonresident alien shall be considered to be connected with income effectively connected with a United States trade or business only to the extent that interest expense is incurred with respect to liabilities that—

(A) Are entered on the books and records of the United States trade or business when incurred, or

(B) Are secured by assets that generate such effectively connected income.

(ii) *Limitations—(A) Maximum debt capitalization.* Interest expense incurred by a nonresident alien is not considered to be connected with effectively connected income to the extent that it is incurred with respect to liabilities that exceed 80 percent of the gross assets of the United States trade or business.

(B) *Collateralization by other assets.* Interest expense on indebtedness that is secured by specific assets (not including the general credit of the nonresident alien) other than the assets of the United States trade or business shall not be considered to be connected with effectively connected income.

(3) *Estates and trusts.* Estates shall be treated in the same manner as individuals. In the case of a trust that is beneficially owned by individuals and is a complex trust, the trust shall be treated in the same manner as individuals under the rules of paragraph



(d) of this section, except that no de minimis amount shall apply. In the case of a trust that is beneficially owned by one or more corporations, the trust shall be treated either as a partnership or as a corporation depending on how the trust is characterized under the rules of section 7701 and the regulations thereunder.

(e) *Partnerships*—(1) *In general—aggregate rule.* A partner's distributive share of the interest expense of a partnership that is directly allocable under § 1.861-10T to income from specific partnership property shall be treated as directly allocable to the income generated by such partnership property. Subject to the exceptions set forth in paragraph (e)(4), a partner's distributive share of the interest expense of a partnership that is not directly allocable under § 1.861-10T generally is considered related to all income producing activities and assets of the partner and shall be subject to apportionment under the rules described in this paragraph. For purposes of this section, a partner's percentage interest in a partnership shall be determined by reference to the partner's interest in partnership income for the year. Similarly, a partner's pro rata share of partnership assets shall be determined by reference to the partner's interest in partnership income for the year.

(2) *Corporate partners whose interest in the partnership is 10 percent or more.* A corporate partner shall apportion its distributive share of partnership interest expense by reference to the partner's assets, including the partner's pro rata share of partnership assets, under the rules of paragraph (f) of this section if the corporate partner's direct and indirect interest in the partnership (as determined under the attribution rules of section 318) is 10 percent or more. A corporation using the tax book value method of apportionment shall use the partnership's inside basis in its assets, adjusted to the extent required under § 1.861-10T(d)(2). A corporation using the fair market value method of apportionment shall use the fair market value of the partnership's assets, adjusted to the extent required under § 1.861-10T(d)(2).

(3) *Individual partners who are general partners or who are limited partners with an interest in the partnership of 10 percent or more.* An individual partner is subject to the rules of this paragraph (e)(3) if either the individual is a general partner or the individual's direct and indirect interest (as determined under the attribution rules of section 318) in the partnership is 10 percent or more. The individual shall

first classify his or her distributive share of partnership interest expense as interest incurred in the active conduct of a trade or business, as passive activity interest, or as investment interest under regulations issued under sections 163 and 469. The individual must then apportion his or her interest expense (including the partner's distributive share of partnership interest expense) under the rules of paragraph (d) of this section. Each such individual partner shall take into account his or her distributive share of partnership gross income or pro rata share of the partnership assets in applying such rules. An individual using the tax book value method of apportionment shall use the partnership's inside basis in its assets, adjusted to the extent required under § 1.861-10T(d)(2). An individual using the fair market value method of apportionment shall use the fair market value of the partnership's assets, adjusted to the extent required under § 1.861-10T(d)(2).

(4) *Less than 10 percent limited partners and less than 10 percent corporate general partners—entity rule*—(i) *Partnership interest expense.* A limited partner (whether individual or corporate) or corporate general partner whose direct and indirect interest (as determined under the attribution rules of section 318) in the partnership is less than 10 percent shall directly allocate its distributive share of partnership interest expense to its distributive share of partnership gross income. Under § 1.904-7(i)(2) of the regulations, such a partner's distributive share of foreign source income of the partnership is treated as passive income (subject to the high taxed income exception of section 904(d)(2)(F)), except in the case of high withholding tax interest or income from a partnership interest held in the ordinary course of the partner's active trade or business, as defined in § 1.904-7(i)(2). A partner's distributive share of partnership interest expense (other than partnership interest expense that is directly allocated to identified property under § 1.861-10T) shall be apportioned in accordance with the partner's relative distributive share of gross foreign source income in each limitation category and of domestic source income from the partnership. To the extent that partnership interest expense is directly allocated under § 1.861-10T, a comparable portion of the income to which such interest expense is allocated shall be disregarded in determining the partner's relative distributive share of gross foreign source income in each limitation category and domestic source income. The partner's distributive share

of the interest expense of the partnership that is directly allocable under § 1.861-10T shall be allocated according to the treatment, after application of § 1.904-7(i)(2), of the partner's distributive share of the income to which the expense is allocated.

(ii) *Other interest expense of the partner.* For purposes of apportioning other interest expense of the partner on an asset basis, the partner's interest in the partnership, and not the partner's pro rata share of partnership assets, is considered to be the relevant asset. The value of this asset for apportionment purposes is either the tax book value or fair market value of the partner's partnership interest, depending on the method of apportionment used by the taxpayer. This amount of a partner's interest in the partnership is allocated among various limitation categories in the same manner as partnership interest expense (that is not directly allocable under § 1.861-10T) is apportioned in subdivision (i) of this paragraph (e)(4). If the partner uses the tax book value method of apportionment, the partner's interest in the partnership must be reduced, for this purpose, to the extent that the partner's basis consists of liabilities that are taken into account under section 752. Under either the tax book value or fair market value method of apportionment, for purposes of this section only, the value of the partner's interest in the partnership must be reduced by the principal amount of any indebtedness of the partner the interest on which is directly allocated to its partnership interest under § 1.861-10T.

(5) *Tiered partnerships.* If a partnership is a partner in another partnership, the distributive share of interest expense of a lower-tier partnership that is subject to the rules of paragraph (e)(4) shall not be reapportioned in the hands of any higher-tier partner. However, the distributive share of interest expense of lower-tier partnership that is subject to the rules of paragraph (e)(2) or (3) shall be apportioned by the partner of the higher-tier partnership or by any higher-tier partnership to which the rules of paragraph (e)(4) apply, taking into account the partner's indirect pro rata share of the lower-tier partnership's income or assets.

(6) *Example*—(i) *Facts.* A, B, and C are partners in a limited partnership. A is a corporate general partner, owns a 5 percent interest in the partnership, and has an adjusted basis in its partnership interest, determined without regard to section 752 of the Code, of \$5. A's investment in the partnership is not held in the ordinary course



of the taxpayer's active trade or business, as defined in § 1.904-7(i)(2). B, a corporate limited partner, owns a 70 percent interest in the partnership, and has an adjusted basis in its partnership interest, determined without regard to section 752 of the Code, of \$70. C is an individual limited partner, owns a 25 percent interest in the partnership, and has an adjusted basis in the partnership interest, determined without regard to section 752 of the Code, of \$25. The partners' interests in the profits and losses of the partnership conform to their respective interests. None of the interest expense incurred directly by any of the partners is directly allocable to their partnership interest under § 1.861-10T. The ABC partnership's sole assets are two apartment buildings, one domestic and the other foreign. The domestic building has an adjusted inside basis of \$600 and the foreign building has an adjusted inside basis of \$500. Each of the buildings is subject to a nonrecourse liability in the amount of \$500. The ABC partnership's total interest expense for the taxable year is \$120, both nonrecourse liabilities bearing interest at the rate of 12 percent. The indebtedness on the domestic building qualifies for direct allocation under the rules of § 1.861-10T. The indebtedness on the foreign building does not so qualify. The partnership incurred no foreign taxes. The partnership's gross income for the taxable year is \$360, consisting of \$100 in foreign source income and \$260 in domestic source income. Under § 1.752-1(e), the nonrecourse liabilities of the partnership are allocated among the partners according to their share of the partnership profits. Accordingly, the adjusted basis of A, B, and C in their respective partnership interests (for other than apportionment purposes) is, respectively, \$55, \$770, and \$275.

(ii) *Determination of the amount of partnership interest expense that is subject to allocation and apportionment.* Interest on the nonrecourse loan on the domestic building is, under § 1.861-10T, directly allocable to income from that investment. The interest expense is therefore directly allocable to domestic income. Interest on the nonrecourse loan on the foreign building is not directly allocable. The interest expense is therefore subject to allocation and apportionment. Thus, \$60 of interest expense is directly allocable to domestic income and \$60 of interest expense is subject to allocation and apportionment.

(iii) *Analysis for Partner A.* A's distributive share of the partnership's gross income is \$18, which consists of \$5 in foreign source income and \$13 in domestic source income. A's distributive share of the ABC interest expense is \$6, \$3 of which is directly allocable to domestic income and \$3 of which is subject to apportionment. After direct allocation of qualifying interest expense, A's distributive share of the partnership's gross income consists of \$5 in foreign source income and \$10 in domestic source income. Because A is a less than 10 percent corporate partner, A's distributive share of any foreign source partnership income is considered to be passive income. Accordingly, in apportioning the \$3 of partnership interest expense that is subject to apportionment on a gross income method, one-third (\$1) is

apportioned to foreign source passive income and two-thirds (\$2) is apportioned to domestic source income. In apportioning its other interest expense, A uses the tax book value method. A's adjusted basis in A's partnership interest (\$55) includes A's share of the partnership's liabilities (\$50), which are included in basis under section 752. For purposes of apportioning other interest expense, A's adjusted basis in the partnership must be reduced to the extent of such liabilities. Thus, A's adjusted basis in the partnership, for purposes of apportionment, is \$5. For the purpose of apportioning A's other interest expense, this \$5 in basis is characterized one-third as a foreign passive asset and two-thirds as a domestic asset, which is the ratio determined in paragraph (e)(4)(i).

(iv) *Analysis for Partner B.* B's distributive share of the ABC interest expense is \$84, \$42 of which is directly allocable to domestic income and \$42 of which is subject to apportionment. As a corporate limited partner whose interest in the partnership is 10 percent or more, B is subject to the rules of paragraph (e)(2) and paragraph (f) of this section. These rules require that a corporate partner apportion its distributive share of partnership interest expense at the partner level on the asset method described in paragraph (g) of this section by reference to its corporate assets, which include, for this purpose, 70 percent of the partnership's assets, adjusted in the manner described in § 1.861-10T(e) to reflect directly allocable interest expense.

(v) *Analysis for Partner C.* C's distributive share of the ABC interest expense is \$30, \$15 of which is directly allocable to domestic income and \$15 of which is subject to apportionment. As an individual limited partner whose interest in the partnership is 10 percent or more, C is subject to the rules of paragraph (e)(3) of this section. These rules require that an individual's share of partnership interest expense be classified under regulations issued under section 163(h) and then apportioned under the rules applicable to individuals, which are set forth in paragraph (d) of this section.

(7) *Foreign partners—(i) Foreign corporations.* The rules of this paragraph (e) shall apply to foreign corporations that are partners in partnerships. Any partnership interest expense that is deemed to be incurred directly by such a partner, any partnership liabilities that are deemed to be incurred directly by such a partner, and any partnership assets that are deemed to be held directly by such a partner under the rules of paragraph (e) (1) and (2) of this section (the aggregate approach) or after the application of paragraph (e)(5) shall be taken into account by such partner in the application of the rules of § 1.882-5, and the value of the partnership interest itself shall be disregarded. Any other partnership interest expense described in paragraph (e)(4) (entity rule) shall be apportioned between effectively

connected income and noneffectively connected income of the partnership by applying the rules of § 1.882-5 as if the partnership were a foreign corporation. In apportioning under § 1.882-5 interest expense that is deemed incurred directly by the partner under paragraph (e) (1) and (2) of this section, any partnership interest described in paragraph (e)(4) shall not be considered to be an asset that generates income effectively connected with a United States trade or business.

*Example.* A is a foreign corporation that is a 50 percent partner in a partnership the only asset of which is an office building in the United States. The partnership's basis in the building is \$1,000, half of which is deemed to be held directly by A under paragraph (e) (1) and (2) of this section. A's distributive share of interest expense of \$100 is deemed to be incurred directly by A under the rules of this paragraph. In applying the rules of § 1.882-5, A shall take account of its share of the partnership liability and shall take account of its share of the partnership's asset.

(ii) *Nonresident aliens.* The distributive share of partnership interest expense of a nonresident alien who is a partner in a partnership shall be considered to be connected with effectively connected income based on the percentage of the assets of the partnership that generate effectively connected income. No interest expense directly incurred by the partner may be allocated and apportioned to effectively connected income derived by the partnership.

(f) *Corporations—(1) Domestic corporations.* Domestic corporations shall apportion interest expense using the asset method described in paragraph (g) of this section and the applicable rules of §§ 1.861-10T through 1.861-13T.

(2) *Foreign branches of domestic corporations.* In the application of the asset method described in paragraph (g) of this section, a domestic corporation shall—

(i) Take into account the assets of any foreign branch, translated according to the rules set forth in paragraph (g) of this section, and

(ii) Combine with its own interest expense any deductible interest expense incurred by a branch, translated according to the rules of section 987 and the regulations thereunder.

For purposes of computing currency gain or loss on any remittance from a branch or other qualified business unit (as defined in § 1.989(a)-1T) under section 987, the rules of this paragraph (f) shall not apply. The branch shall compute its currency gain or loss on remittances by taking into account only its separate expenses and its separate income.



**Example—(i) Facts.** X is a domestic corporation which operates B, a branch doing business in a foreign country. In 1988, without regard to branch B, X has gross domestic source income of \$1,000 and gross foreign source general limitation income of \$500 and incurs \$200 of interest expense. Using the tax book value method of apportionment, X, without regard to branch B, determines the value of its assets that generate domestic source income to be \$6,000 and the value of its assets that generate foreign source general limitation income to be \$1,000. B constitutes a qualified business unit within the meaning of section 989 with a functional currency other than the U.S. dollar and uses the profit and loss method prescribed by section 987. Applying the translation rules of section 987, B earned \$500 of gross foreign general limitation income and incurred \$100 of interest expense. B incurred no other expenses. For 1988, the average functional currency book value of B's assets that generate foreign general limitation income translated at the year-end rate for 1988 is \$3,000.

**(ii) Computation of net income.** The combined assets of X and B for 1988 (averaged under the rules of § 1.861-9T(g)(3)) consist 60 percent of assets generating domestic source income and 40 percent of assets generating foreign source general limitation income. The combined interest expense of both X and B is \$300. Thus, \$180 of the combined interest expense is apportioned to domestic source income and \$120 is apportioned to the foreign source income, yielding net domestic source income of \$820 and net foreign source general limitation income of \$880.

**(iii) Computation of currency gain or loss.** For purposes of computing currency gain or loss on branch remittances, B takes into account only its gross income and its separate expenses. In 1988, B therefore has a net amount of income in foreign currency units equal in value to \$400. Gain or loss on remittances shall be computed by reference to this amount.

**(3) Controlled foreign corporations—**  
**(i) In general.** For purposes of computing subpart F income and computing earnings and profits for all other federal tax purposes, the interest expense of a controlled foreign corporation may be apportioned either using the asset method described in paragraph (g) of this section or using the modified gross income method described in paragraph (j) of this section, subject to the rules of subdivisions (ii) and (iii) of this paragraph (f)(2). However, the gross income method described in paragraph (j) of this section is not available to any controlled foreign corporation if a United States shareholder and the members of its affiliated group (as defined in § 1.861-11T(d)) constitute controlling shareholders of such controlled foreign corporation and such affiliated group elects the fair market value method of apportionment under paragraph (g) of this section.

**(ii) Manner of election.** The election to use the asset method described in paragraph (g) of this section or the modified gross income method described in paragraph (j) of this section may be made either by the controlled foreign corporation or by the controlling United States shareholders on behalf of the controlled foreign corporation. The term "controlling United States shareholders" means those United States shareholders (as defined in section 951(b)) who, in aggregate, own (within the meaning of section 958(a)) greater than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote. In the case of a controlled foreign corporation in which the United States shareholders own stock representing more than 50 percent of the value of the stock in such corporation, but less than 50 percent of the combined voting power of all classes of stock in such corporation, the term "controlling United States shareholders" means all the United States shareholders (as defined in section 951(b)) who own (within the meaning of section 958(a)) stock of the controlled foreign corporation. All United States shareholders are bound by the election of either the controlled foreign corporation or the controlling United States shareholders. The election shall be made by filing a written statement described in § 1.964-1(c)(3)(ii) at the time and in the manner described therein and providing a written notice described in § 1.964-1(c)(3)(iii), except that no such written statement or notice is required to be filed or sent before March 13, 1989.

**(iii) Consistency requirement.** The same method of apportionment must be employed by all controlled foreign corporations in which a United States taxpayer and the members of its affiliated group (as defined in § 1.861-11T(d)) constitute controlling United States shareholders. A controlled foreign corporation that is required by this paragraph (f)(3)(iii) to utilize a particular method of apportionment must do so with respect to all United States shareholders.

**(iv) Stock characterization.** Pursuant to § 1.861-12T(c)(2), the stock of a controlled foreign corporation shall be characterized in the hands of any United States shareholder using the same method that the controlled foreign corporation uses to apportion its interest expense.

**(4) Other relevant provisions.** Affiliated groups of corporations are subject to special rules set forth in § 1.861-11T. Section 1.861-12T sets forth rules relating to basis adjustments for

stock in nonaffiliated 10 percent owned corporations, special rules relating to the consideration and characterization of certain assets in the apportionment of interest expense, and to other special rules pertaining to the apportionment of interest expense. Section 1.861-13T contains transition rules limiting the application of the rules of §§ 1.861-8T through 1.861-12T, which are otherwise applicable to taxable years beginning after 1986. In the case of an affiliated group of corporations as defined in § 1.861-11T(d), any reference in §§ 1.861-8T through 1.861-13T to the "taxpayer" with respect to the allocation and apportionment of interest expense generally denotes the entire affiliated group of corporations and not the separate members thereof, unless the context otherwise requires.

**(g) Asset method—(1) In general.** (i) Under the asset method, the taxpayer apportions interest expense to the various statutory groupings based on the average total value of assets within each such grouping for the taxable year, as determined under the asset valuation rules of this paragraph (g)(1) and paragraph (g)(2) of this section and the asset characterization rules of paragraph (g)(3) of this section and § 1.861-12T. Except to the extent otherwise provided (see, e.g., paragraph (d)(1)(iv) of this section), taxpayers must apportion interest expense only on the basis of asset values and may not apportion any interest deduction on the basis of gross income.

(ii) A taxpayer may elect to determine the value of its assets on the basis of either the tax book value or the fair market value of its assets. For rules concerning the application of the fair market value method, see paragraph (h) of this section. In the case of an affiliated group—

(A) The parent of which used the fair market value method prior to 1987, or

(B) A substantial portion of which used the fair market value method prior to 1987,

such a taxpayer may use either the fair market value method or the tax book value method for its tax year commencing in 1987 and may use either such method in its tax year commencing in 1988 without regard to which method was used in its tax year commencing in 1987 and without securing the Commissioner's consent. The use of the fair market value method in 1988, however, shall operate as a binding election as described in § 1.861-8T(c)(2). For rules requiring consistency in the use of the tax book value or fair market value method, see § 1.861-8T(c)(2).



(iii) A taxpayer electing to apportion its interest expense on the basis of the fair market value of its assets must establish the fair market value to the satisfaction of the Commissioner. If a taxpayer fails to establish the fair market value of an asset to the satisfaction of the Commissioner, the Commissioner may determine the appropriate asset value. If a taxpayer fails to establish the value of a substantial portion of its assets to the satisfaction of the Commissioner, the Commissioner may require the taxpayer to use the tax book value method of apportionment.

(iv) For rules relating to earnings and profits adjustments by taxpayers using the tax book value method for the stock in certain nonaffiliated 10 percent owned corporations, see § 1.861-12T(b).

(v) The provisions of this paragraph (g)(1) may be illustrated by the following examples.

**Example (1)—(i) Facts.** X, a domestic corporation organized on January 1, 1987, has deductible interest expense in 1987 in the amount of \$150,000. X apportions its expenses according to the tax book value method. The adjusted basis of X's assets is \$3,600,000, \$3,000,000 of which generate domestic source income and \$600,000 of which generate foreign source general limitation income.

(ii) **Allocation.** No portion of the \$150,000 deduction is directly allocable solely to identified property within the meaning of § 1.861-10T. Thus, X's deduction for interest is related to all its activities and assets.

(iii) **Apportionment.** X apportions its interest expense as follows:

To foreign source general limitation income:

\$150,000 ×	$\frac{\$600,000}{\$3,600,000}$	.....	\$25,000
-------------	---------------------------------	-------	----------

To domestic source income:

\$150,000 ×	$\frac{\$3,000,000}{\$3,600,000}$	.....	\$125,000
-------------	-----------------------------------	-------	-----------

**Example (2)—(i) Facts.** Assume the same facts as in Example (1), except that X apportions its interest expense on the basis of the fair market value of its assets. X's total assets have a fair market value of \$4,000,000, \$3,200,000 of which generate domestic source income and \$800,000 of which generate foreign source general limitation income.

(ii) **Allocation.** No portion of the \$150,000 deduction is directly allocable solely to identified property within the meaning of § 1.861-10T. Thus, X's deduction for interest is related to all its activities and properties.

(iii) **Apportionment.** If it establishes the fair market value of its assets to the satisfaction of the Commissioner, X may apportion its interest expense as follows:

To foreign source general limitation income:

\$150,000 ×	$\frac{\$800,000}{\$4,000,000}$	.....	\$30,000
-------------	---------------------------------	-------	----------

To domestic source income:

\$150,000 ×	$\frac{\$3,200,000}{\$4,000,000}$	.....	\$120,000
-------------	-----------------------------------	-------	-----------

(2) **Asset values—(i) General rule.** For purposes of determining the value of assets under this section, an average of values (book or market) within each statutory grouping and the residual grouping shall be computed for the year on the basis of values of assets at the beginning and end of the year. For the first taxable year beginning after 1986, a taxpayer may choose to determine asset values solely by reference to the year-end value of its assets, provided that all the members of an affiliated group as defined in § 1.861-11T(d) make the same choice. Thus, no averaging is required for the first taxable year beginning after 1986. Where a substantial distortion of asset values would result from averaging beginning-of-year and year-end values, as might be the case in the event of a major corporate acquisition or disposition, the taxpayer must use a different method of asset valuation that more clearly reflects the average value of assets weighted to reflect the time such assets are held by the taxpayer during the taxable year.

(ii) **Special rule for qualified business units of domestic corporations with functional currency other than the U.S. dollar—(A) Tax book value method.** In the case of taxpayers using the tax book value method of apportionment, the following rules shall apply to determine the value of the assets of a qualified business unit (as defined in section 989(a)) of a domestic corporation with a functional currency other than the dollar.

(1) **Profit and loss branch.** In the case of a branch for which an election is not effective under § 1.985-2T to use the dollar approximate separate transactions method of computing currency gain or loss, the tax book value shall be determined by applying the rules of paragraph (g)(2)(i) and (3) of this section with respect to beginning-of-year and end-of-year tax book value in units of functional currency that are translated into dollars at the end-of-year exchange rate between the functional currency and the U.S. dollar.

**Example.** At the end of 1987, a profit and loss branch has assets that generate foreign source general limitation income with a tax book value in units of functional currency of 100. At the end of 1987, the unit is worth \$1. At the end of 1988, the branch has assets that generate foreign source general limitation income with a tax book value in units of functional currency of 80. At the end of 1988, the unit is worth \$2. The average value of foreign source general limitation assets for 1988 is 90 units, which is worth \$180.

(2) **Approximate separate transactions method.** In the case of a branch for which an election is effective under § 1.985-2T to use the dollar

approximate separate transactions method to compute currency gain or loss, the beginning-of-year dollar amount of the assets shall be determined by reference to the end-of-year balance sheet of the branch for the immediately preceding taxable year, adjusted for United States generally accepted accounting principles and United States tax accounting principles, and translated into U.S. dollars as provided in § 1.985-3T. The year-end dollar amount of the assets of the branch shall be determined in the same manner by reference to the end-of-year balance sheet for the current taxable year. The beginning-of-year and end-of-year dollar tax book value of assets, as so determined, within each grouping must then be averaged as provided in paragraph (g)(2)(i) of this section.

(B) **Fair market value method.** In the case of taxpayers using the fair market value method of apportionment, the beginning-of-year and end-of-year fair market values of branch assets within each grouping shall be computed in dollars and averaged as provided in this paragraph (g)(2).

(iii) **Adjustment for directly allocated interest.** Prior to averaging, the year-end value of any asset to which interest expense is directly allocated during the current taxable year under the rules of § 1.861-10T (b) or (c) shall be reduced (but not below zero) by the percentage of the principal amount of indebtedness outstanding at year-end equal to the percentage of all interest on the debt for the taxable year that is directly allocated.

(iv) **Assets in deferred intercompany transactions.** In the application of the asset method described in this paragraph (g), the tax book value of assets transferred between affiliated corporations in deferred intercompany transactions shall be determined without regard to the gain or loss that is deferred under the regulations issued under section 1502.

(v) **Example.** X is a domestic corporation that uses the fair market value method of apportionment. X is a calendar year taxpayer. X owns 25 percent of the stock of A, a noncontrolled section 902 corporation. At the end of 1987, the fair market value of X's assets by income grouping are as follows:

Domestic.....	\$1,000,000
Foreign general limitation.....	500,000
Foreign passive.....	500,000
Noncontrolled section 902 corporation.....	50,000

For its 1987 tax year, X apportions its interest expense by reference to the 1987 year-end values. In July of 1988, X sells a portion of its investment in A and in an asset acquisition purchases a shipping business, the assets of which generate exclusively



foreign shipping income. At the end of 1988, the fair market values of X's assets by income grouping are as follows:

Domestic.....	\$800,000
Foreign general limitation.....	900,000
Foreign passive.....	300,000
Noncontrolled section 902 corporation.....	40,000
Foreign shipping.....	100,000

For its 1988 tax year, X shall apportion its interest expense by reference to the average of the 1988 beginning-of-year values (the 1987 year-end values) and the 1988 year-end values, assuming that the averaging of beginning-of-year and end-of-year values does not cause a substantial distortion of asset values. These averages are as follows:

Domestic.....	\$900,000
Foreign general limitation.....	700,000
Foreign passive.....	400,000
Foreign shipping.....	50,000
Noncontrolled section 902 corporation.....	45,000

(3) *Characterization of assets.* Assets are characterized for purposes of this section according to the source and type of the income that they generate, have generated, or may reasonably be expected to generate. The physical location of assets is not relevant to this determination. Subject to the special rules of paragraph (h) concerning the application of the fair market value method of apportionment, the value of assets within each statutory grouping and the residual grouping at the beginning and end of each year shall be determined by dividing the taxpayer's assets into three types—

(i) *Single category assets.* Assets that generate income that is exclusively within a single statutory grouping or the residual grouping;

(ii) *Multiple category assets.* Assets that generate income within more than one grouping of income (statutory or residual); and

(iii) *Assets without directly identifiable yield.* Assets that produce no directly identifiable income yield or that contribute equally to the generation of all the income of the taxpayer (such as assets used in general and administrative functions).

Single category assets are directly attributable to the relevant statutory or residual grouping of income. In order to attribute multiple category assets to the relevant groupings of income, the income yield of each such asset for the taxable year must be analyzed to determine the proportion of gross income generated by it within each relevant grouping. The value of each asset is then prorated among the relevant groupings of income according to their respective proportions of gross income. The value of each asset without directly identifiable income yield must be identified. However, because

prorating the value of such assets cannot alter the ratio of assets within the various groupings of income (as determined by reference to the single and multiple category assets), they are not taken into account in determining that ratio. Special asset characterization rules that are set forth in § 1.861-12T. An example demonstrating the application of the asset method is set forth in § 1.861-12T(d).

(h) *The fair market value method.* An affiliated group (as defined in § 1.861-11T(d)) or other taxpayer (the "taxpayer") that elects to use the fair market value method of apportionment shall value its assets according to the following methodology.

(1) *Determination of values—(i) Valuation of group assets.* The taxpayer shall first determine the aggregate value of the assets of the taxpayer on the last day of its taxable year without excluding the value of stock in foreign subsidiaries or any other asset. In the case of a publicly traded corporation, this determination shall be equal to the aggregate trading value of the taxpayer's stock traded on established securities markets at year-end increased by the taxpayer's year-end liabilities to unrelated persons and its pro rata share of year-end liabilities of all related persons owed to unrelated persons. In determining whether persons are related, § 1.861-8T(c)(2) shall apply. In the case of a corporation that is not publicly traded, this determination shall be made by reference to the capitalization of corporate earnings, in accordance with the rules of Rev. Rul. 68-609. In either case, control premium shall not be taken into account.

(ii) *Valuation of tangible assets.* The taxpayer shall determine the value of all assets held by the taxpayer and its pro rata share of assets held by other related persons on the last day of its taxable year, excluding stock or indebtedness in such persons, any intangible property as defined in section 936(h)(3)(B), or goodwill or going concern value intangibles. Such valuations shall be made using generally accepted valuation techniques. For this purpose, assets may be combined into reasonable groupings. Statistical methods of valuation may only be used in connection with fungible property, such as commodities. The value of stock in any corporation that is not a related person shall be determined under the rules of paragraph (h)(1)(i) of this section, except that no liabilities shall be taken into account.

(iii) *Computation of intangible asset value.* The value of the intangible assets of the taxpayer and of intangible assets of all related persons attributable to the

taxpayer's ownership in related persons is equal to the amount obtained by subtracting the amount determined under paragraph (h)(1)(ii) of this section from the amount determined under paragraph (h)(1)(i) of this section.

(2) *Apportionment of intangible asset value.* The value of the intangible assets determined under paragraph (h)(1)(iii) of this section is apportioned among the taxpayer and all related persons in proportion to the net income before interest expense of the taxpayer and the taxpayer's pro rata share of the net income before interest expense of each related person held by the taxpayer, excluding income that is passive under § 1.904-4(b). For this purpose, net income is determined before reduction for income taxes. Net income of the taxpayer and of related persons shall be computed without regard to dividends or interest received from any person that is related to the taxpayer.

(3) *Characterization of affiliated group's portion of intangible asset value.* The portion of the value of intangible assets of the taxpayer and related persons that is apportioned to the taxpayer under paragraph (h)(2) of this section is characterized on the basis of net income before interest expense, as determined under paragraph (h)(2) of this section, of the taxpayer within each statutory or residual grouping of income.

(4) *Valuing stock in related persons held by the taxpayer.* The value of stock in a related person held by the taxpayer equals the sum of the following amounts reduced by the taxpayer's pro rata share of liabilities of such related person:

(i) The portion of the value of intangible assets of the taxpayer and related persons that is apportioned to such related person under paragraph (h)(2) of this section;

(ii) The taxpayer's pro rata share of tangible assets held by the related person (as determined under paragraph (h)(1)(ii) of this section); and

(iii) The total value of stock in all related person held by the related person as determined under this paragraph (h)(4).

(5) *Characterizing stock in related persons.* Stock in a related person held by the taxpayer or by another related person shall be characterized on the basis of the fair market value of the taxpayer's pro rata share of assets held by the related person attributed to each statutory grouping and the residual grouping under the stock characterization rules of § 1.861-12T(c)(3)(ii), except that the portion of the value of intangible assets of the taxpayer and related persons that is apportioned to the related person under



paragraph (h)(2) of this section shall be characterized on the basis of the net income before interest expense of the related person within each statutory grouping or residual grouping (excluding income that is passive under § 1.904-4(b)).

(6) *Adjustments for apportioning related person expenses.* For purposes of apportioning expenses of a related person, the value of stock in a second related person as otherwise determined under paragraph (h)(4) of this section (which is determined on the basis of the taxpayer's percentage ownership interest in the second related person) shall be increased to reflect the first related person's percentage ownership interest in the second related person to the extent it is larger.

*Example.* Assume that a taxpayer owns 80 percent of CFC1, which owns 100 percent of CFC2. The value of CFC1 is determined generally under paragraph (h)(4) on the basis of the taxpayer's 80 percent indirect interest in CFC2. For purposes of apportioning expenses of CFC1, 100 percent of the stock of CFC1 must be taken into account. Therefore, the value of CFC2 stock in the hands of CFC1 shall equal the value of CFC2 stock in the hands of CFC1 as determined under paragraph (h)(4) of this section, increased by 25 percent of such amount to reflect the fact that CFC1 owns 100 percent and not 80 percent of CFC2.

(i) [Reserved.]

(j) *Modified gross income method.* Subject to rules set forth in paragraph (f)(3) of this section, the interest expense of a controlled foreign corporation may be allocated according to the following rules.

(1) *Single-tier controlled foreign corporation.* In the case of a controlled foreign corporation that does not hold stock in any lower-tier controlled foreign corporation, the interest expense of the controlled foreign corporation shall be apportioned based on its gross income.

(2) *Multiple vertically owned controlled foreign corporations.* In the case of a controlled foreign corporation that holds stock in any lower-tier controlled foreign corporation, the interest expense of that controlled foreign corporation and such upper-tier controlled foreign corporation shall be apportioned based on the following methodology:

(i) *Step 1.* Commencing with the lowest-tier controlled foreign corporation in the chain, allocate and apportion its interest expense based on its gross income as provided in paragraph (j)(1) of this section, yielding gross income in each grouping net of interest expense.

(ii) *Step 2.* Moving to the next higher-tier controlled foreign corporation, combine the gross income of such corporation within each grouping with its pro rata share of the gross income net of interest expense of all lower-tier controlled foreign corporations held by such higher-tier corporation within the same grouping adjusted as follows:

(A) Exclude from the gross income of the upper-tier corporation any dividends or other payments received from the lower-tier corporation other than interest subject to look-through under section 904(d)(3); and

(B) Exclude from the gross income net of interest expense of any lower-tier corporation any subpart F income (net of interest expense apportioned to such income).

Then apportion the interest expense of the higher-tier controlled foreign corporation based on the adjusted combined gross income amounts. Repeat this step 2 for each next higher-tier controlled foreign corporation in the chain. For purposes of this paragraph (j)(2)(ii), pro rata share shall be determined under principles similar to section 951(a)(2).

#### § 1.861-10T Special allocations of interest expense (Temporary regulations).

(a) *In general.* This section applies to all taxpayers and provides three exceptions to the rules of § 1.861-9T that require the allocation and apportionment of interest expense on the basis of all assets of all members of the affiliated group. Paragraph (b) of this section describes the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness. Paragraph (c) of this section describes the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transaction. Paragraph (d) of this section provides special rules that are applicable to all transactions described in paragraphs (b) and (c) of this section. Paragraph (e) of this section requires the direct allocation of third party interest of an affiliated group to such group's investment in related controlled foreign corporations in cases involving excess related person indebtedness (as defined therein). See also § 1.861-9T(b)(5), which requires direct allocation of amortizable bond premium.

(b) *Qualified nonrecourse indebtedness—(1) In general.* In the case of qualified nonrecourse indebtedness (as defined in paragraph (b)(2) of this section), the deduction for interest shall be considered directly allocable solely to the gross income which the property

acquired, constructed, or improved with the proceeds of the indebtedness generates, has generated, or could reasonably be expected to generate.

(2) *Qualified nonrecourse indebtedness defined.* The term "qualified nonrecourse indebtedness" means any borrowing that is not excluded by paragraph (b)(4) of this section if:

(i) The borrowing is specifically incurred for the purpose of purchasing, constructing, or improving identified property that is either depreciable tangible personal property or real property with a useful life of more than one year or for the purpose of purchasing amortizable intangible personal property with a useful life of more than one year;

(ii) The proceeds are actually applied to purchase, construct, or improve the identified property;

(iii) Except as provided in paragraph (b)(7)(ii) (relating to certain third party guarantees in leveraged lease transactions), the creditor can look only to the identified property (or any lease or other interest therein) as security for payment of the principal and interest on the loan and, thus, cannot look to any other property, the borrower, or any third party with respect to repayment of principal or interest on the loan;

(iv) The cash flow from the property, as defined in paragraph (b)(3) of this section, is reasonably expected to be sufficient in the first year of ownership as well as in each subsequent year of ownership to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payments of interest and original issue discount and periodic payments of principal in each such year; and

(v) There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in subdivisions (iii) and (iv) of this paragraph (b)(2).

(3) *Cash flow defined—(i) In general.* The term "cash flow from the property" as used in paragraph (b)(2)(iv) of this section means a stream of revenue (as computed under paragraph (b)(3)(ii) of this section) substantially all of which derives directly from the property. The phrase "cash flow from the property" does not include revenue if a significant portion thereof is derived from activities such as sales, labor, services, or the use of other property. Thus, revenue derived from the sale or lease of inventory or of similar property does not constitute cash flow from the property, including plant or equipment used in the manufacture and sale or lease, or purchase and sale or lease, of such inventory or similar



property. In addition, revenue derived in part from the performance of services that are not ancillary and subsidiary to the use of property does not constitute cash flow from the property.

(ii) *Self-constructed assets.* The activities associated with self-construction of assets shall be considered to constitute labor or services for purposes of paragraph (b)(3)(i) only if the self-constructed asset—

(A) Is constructed for the purpose of resale, or

(B) Without regard to purpose, is sold to an unrelated person within one year from the date that the property is placed in service for purposes of section 167.

(iii) *Computation of cash flow.* Cash flow is computed by subtracting cash disbursements excluding debt service from cash receipts.

(iv) *Analysis of operating costs.*

[Reserved]

(v) *Examples.* The principles of this paragraph may be demonstrated by the following examples.

*Example (1).* In 1987, X borrows \$100,000 in order to purchase an apartment building, which X then purchases. The loan is secured only by the building and the leases thereon. Annual debt service on the loan is \$12,000. Annual gross rents from the building are \$20,000. Annual taxes on the building are \$2,000. Other expenses deductible under section 162 are \$2,000. Rents are reasonably expected to remain stable or increase in subsequent years, and taxes and expenses are reasonably expected to remain proportional to gross rents in subsequent years. X provides security, maintenance, and utilities to the tenants of the building. Based on facts and circumstances, it is determined that, although services are provided to tenants, these services are ancillary and subsidiary to the occupancy of the apartments. Accordingly, the cash flow of \$16,000 is considered to constitute a return from the property. Furthermore, such cash flow is sufficient to fulfill the terms and conditions of the loan agreement as required by paragraph (b)(2)(iii).

*Example (2).* In 1987, X borrows funds in order to purchase a hotel, which X then purchases and operates. The loan is secured only by the hotel. Based on facts and circumstances, it is determined that the operation of the hotel involves services the value of which is significant in relation to amounts paid to occupy the rooms. Thus, a significant portion of the cash flow is derived from the performance of services incidental to the occupancy of hotel rooms. Accordingly, the cash flow from the hotel is considered not to constitute a return on or from the property.

*Example (3).* In 1987, X borrows funds in order to build a factory, which X then builds and operates. The loan is secured only by the factory and the equipment therein. Based on the facts and circumstances, it is determined that the operation of the factory involves significant expenditures for labor and raw materials. Thus, a significant portion of the

cash flow is derived from labor and the processing of raw materials. Accordingly, the cash flow from the factory is considered not to constitute a return on or from the property.

(4) *Exclusions.* The term "qualified nonrecourse indebtedness" shall not include any transaction that—

(i) Lacks economic significance within the meaning of paragraph (b)(5) of this section;

(ii) Involves cross collateralization within the meaning of paragraph (b)(6) of this section;

(iii) Except in the case of a leveraged lease described in paragraph (b)(7)(ii) of this section, involves credit enhancement within the meaning of paragraph (b)(7) of this section or, with respect to loans made on or after October 14, 1988, does not under the terms of the loan documents, prohibit the acquisition by the holder of bond insurance or similar forms of credit enhancement;

(iv) Involves the purchase of inventory;

(v) Involves the purchase of any financial asset, including stock in a corporation, an interest in a partnership or a trust, or the debt obligation of any obligor (although interest incurred in order to purchase certain financial instruments may qualify for direct allocation under paragraph (c) of this section);

(vi) Involves interest expense that constitutes qualified residence interest as defined in section 163(h)(3); or

(vii) [Reserved].

(5) *Economic significance.*

Indebtedness that otherwise qualifies under paragraph (b)(2) shall nonetheless be subject to apportionment under § 1.861-9T if, taking into account all the facts and circumstances, the transaction (including the security arrangement) lacks economic significance.

(6) *Cross collateralization.* The term "cross collateralization" refers to the pledge as security for a loan of—

(i) Any asset of the borrower other than the identified property described in paragraph (b)(2) of this section, or

(ii) Any asset belonging to any related person, as defined in § 1.861-8T(c)(2).

(7) *Credit enhancement.*—(i) *In general.* Except as provided in paragraph (b)(7)(ii) of this section, the term "credit enhancement" refers to any device, including a contract, letter of credit, or guaranty, that expands the creditor's rights, directly or indirectly, beyond the identified property purchased, constructed, or improved with the funds advanced and, thus effectively provides as security for a loan the assets of any person other than the borrower. The acquisition of bond insurance or any other contract of

suretyship by an initial or subsequent holder of an obligation shall constitute credit enhancement.

(ii) *Special rule for leveraged leases.* For purposes of this paragraph (b), the term "credit enhancement" shall not include any device under which any person that is not a related person within the meaning of § 1.861-8T(c)(2) agrees to guarantee, without recourse to the lessor or any person related to the lessor, a lessor's payment of principal and interest on indebtedness that was incurred in order to purchase or improve an asset that is depreciable tangible personal property or depreciable tangible real property (and the land on which such real property is situated) that is leased to a lessee that is not a related person in a transaction that constitutes a lease for federal income tax purposes.

(iii) *Syndication of credit risk and sale of loan participations.* The term "syndication of credit risk" refers to an arrangement in which one primary lender secures the promise of a secondary lender to bear a portion of the primary lender's credit risk on a loan. The term "sale of loan participations" refers to an arrangement in which one primary lender divides a loan into several portions, sells and assigns all rights with respect to one or more portions to participating secondary lenders, and does not remain at risk in any manner with respect to the portion assigned. For purposes of this paragraph (b), the syndication of credit risk shall constitute credit enhancement because the primary lender can look to secondary lenders for payment of the loan, notwithstanding limitations on the amount of the secondary lender's liability. Conversely, the sale of loan participations does not constitute credit enhancement, because the holder of each portion of the loan can look solely to the asset securing the loan and not to the credit or other assets of any person.

(8) *Other arrangements that do not constitute cross collateralization or credit enhancement.* For purposes of paragraphs (b) (6) and (7) of this section, the following arrangements do not constitute cross collateralization or credit enhancement:

(i) *Integrated projects.* A taxpayer's pledge of multiple assets of an integrated project, provided that the integrated project. An integrated project consists of functionally related and geographically contiguous assets that, as to the taxpayer, are used in the same trade or business.

(ii) *Insurance.* A taxpayer's purchase of third-party casualty and liability insurance on the collateral or, by



contract, bearing the risk of loss associated with destruction of the collateral or with respect to the attachment of third party liability claims.

(iii) *After-acquired property.* Extension of a creditor's security interest to improvements made to the collateral, provided that the extension does not constitute excess collateralization under paragraph (b)(6), determined by taking into account the value of improvements at the time the improvements are made and the value of the original property at the time the loan was made.

(iv) *Warranties of completion and maintenance.* A taxpayer's warranty to a creditor that it will complete construction or manufacture of the collateral or that it will maintain the collateral in good condition.

(v) *Substitution of collateral.* A taxpayer's right to substitute collateral under any loan contract. However, after the right is exercised, the loan shall no longer constitute qualified nonrecourse indebtedness.

(9) *Refinancings.* If a taxpayer refinances qualified nonrecourse indebtedness (as defined in paragraph (b)(2) of this section) with new indebtedness, such new indebtedness shall continue to qualify only if—

(i) The principal amount of the new indebtedness does not exceed by more than five percent the remaining principal amount of the original indebtedness;

(ii) The term of the new indebtedness does not exceed by more than six months the remaining term of the original indebtedness; and

(iii) The requirements of this paragraph (other than those of paragraph (b)(2) (i) and (ii) of this section) are satisfied at the time of the refinancing, and the exclusions contained in this paragraph (b)(4) do not apply.

(10) *Post-construction permanent financing.* Financing that is obtained after the completion of constructed property will be deemed to satisfy the requirements of paragraph (b)(2) (i) and (ii) of this section if—

(i) The financing is obtained within one year after the constructed property or substantially all of a constructed integrated project (as defined in paragraph (b)(9)(i) of this section) is placed in service for purposes of section 167; and

(ii) The financing does not exceed the cost of construction (including construction period interest).

(11) *Assumptions of pre-existing qualified nonrecourse indebtedness.* If a transferee of property that is subject to

qualified nonrecourse indebtedness assumes such indebtedness, the indebtedness shall continue to constitute qualified nonrecourse indebtedness, provided that the assumption in no way alters the qualified status of the debt.

(12) *Excess collateralization.*

[Reserved]

(c) *Direct allocations in the case of certain integrated financial transactions—*(1) *General rule.* Interest expense incurred on funds borrowed in connection with an integrated financial transaction (as defined in paragraph (c)(2) of this section) shall be directly allocated to the income generated by the investment funded with the borrowed amounts.

(2) *Definition.* The term "integrated financial transaction" refers to any transaction in which—

(i) The taxpayer—

(A) Incurs indebtedness for the purpose of making an identified term investment;

(B) Identifies the indebtedness as incurred for such purpose at the time the indebtedness is incurred; and

(C) Makes the identified term investment within ten business days after incurring the indebtedness;

(ii) The return on the investment is reasonably expected to be sufficient throughout the term of the investment to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payments of principal and interest or original issue discount;

(iii) The income constitutes interest or original issue discount or would constitute income equivalent to interest if earned by a controlled foreign corporation (as described in § 1.954-2T(h));

(iv) The debt incurred and the investment mature within ten business days of each other;

(v) The investment does not relate in any way to the operation of, and is not made in the normal course of, the trade or business of the taxpayer or any related person, including the financing of the sale of goods or the performance of services by the taxpayer or any related person, or the compensation of the taxpayer's employees (including any contribution or loan to an employee stock ownership plan (as defined in section 4975(e)(7)) or other plan that is qualified under section 401(a)); and

(vi) The borrower does not constitute a financial services entity (as defined in section 904 and the regulations thereunder).

(3) *Rollovers.* In the event that a taxpayer sells or otherwise liquidates an

investment described in paragraph (c)(2) of this section, the interest expense incurred on the borrowing shall, subsequent to that liquidation, no longer qualify for direct allocation under this paragraph (c).

(4) *Examples.* The principles of this paragraph (c) may be demonstrated by the following examples.

*Example (1).* X is a manufacturer and does not constitute a financial services entity as defined in the regulations under section 904. On January 1, 1988, X borrows \$100 for 6 months at an annual interest rate of 10 percent. X identifies on its books and records by the close of that day that the indebtedness is being incurred for the purpose of making an investment that is intended to qualify as an integrated financial transaction. On January 5, 1988, X uses the proceeds to purchase a portfolio of stock that approximates the composition of the Standard & Poor's 500 Index. On that day, X also enters into a forward sale contract that requires X to sell the stock on June 1, 1988 for \$110. X identifies on its books and records by the close of January 5, 1988, that the portfolio stock purchases and the forward sale contract constitute part of the integrated financial transaction with respect to which the identified borrowing was incurred. Under § 1.954-2T(h), the income derived from the transaction would constitute income equivalent to interest. Assuming that the return on the investment to be derived on June 1, 1988, will be sufficient to pay the interest due on June 1, 1988, the interest on the borrowing is directly allocated to the gain from the investment.

*Example (2).* X does not constitute a financial services entity as defined in the regulations under section 904. X is in the business of, among other things, issuing credit cards to consumers and purchasing from merchants who accept the X card the receivables of consumers who make purchases with the X card. X borrows from Y in order to purchase X credit card receivables from Z, a merchant. Assuming that the Y borrowing satisfies the other requirements of paragraph (c)(2) of this section, the transaction nonetheless cannot constitute an integrated financial transaction because the purchase relates to the operation of X's trade or business.

*Example (3).* Assume the same facts as in Example 2, except that X borrows in order to purchase the receivables of A, a merchant who does not accept the X card and is not otherwise engaged directly or indirectly in any business transaction with X. Because the borrowing is not related to the operation of X's trade or business, the borrowing may qualify as an integrated financial transaction if the other requirements of paragraph (c)(2) of this section are satisfied.

(d) *Special rules.* In applying paragraphs (b) and (c) of this section, the following special rules shall apply.

(1) *Related person transactions.* The rules of this section shall not apply to the extent that any transaction—



(i) Involves either indebtedness between related persons (as defined in section § 1.861-8T(c)(2)) or indebtedness incurred from unrelated persons for the purpose of purchasing property from a related person; or

(ii) Involves the purchase of property that is leased to a related person (as defined in § 1.861-8T(c)(2)) in a transaction described in paragraph (b) of this section. If a taxpayer purchases property and leases such property in whole or in part to a related person, a portion of the interest incurred in connection with such an acquisition, based on the ratio that the value of the property leased to the related person bears to the total value of the property, shall not qualify for direct allocation under this section.

(2) *Consideration of assets or income to which interest is directly allocated in apportioning other interest expense.* In apportioning interest expense under § 1.861-9T, the year-end value of any asset to which interest expense is directly allocated under this section during the current taxable year shall be reduced to the extent provided in § 1.861-9T(g)(2)(iii) to reflect the portion of the principal amount of the indebtedness outstanding at year-end relating to the interest which is directly allocated. A similar adjustment shall be made to the end-of-year value of assets for the prior year for purposes of determining the beginning-of-year value of assets for the current year. These adjustments shall be made prior to averaging beginning-of-year and end-of-year values pursuant to § 1.861-9T(g)(2). In apportioning interest expense under the modified gross income method, gross income shall be reduced by the amount of income to which interest expense is directly allocated under this section.

(e) *Treatment of certain related controlled foreign corporation indebtedness—(1) In general.* In taxable years beginning after 1987, if a United States shareholder has incurred substantially disproportionate indebtedness in relation to the indebtedness of its related controlled foreign corporations so that such corporations have excess related person indebtedness (as determined under step 4 in subdivision (iv) of this paragraph (e)(1)), the third party interest expense of the related United States shareholder (excluding amounts allocated under paragraphs (b) and (c)) in an amount equal to the interest income received on such excess related person indebtedness

shall be allocated to gross income in the various separate limitation categories described in section 904(d)(1) in the manner prescribed in step 6 in subdivision (vi) of this paragraph (e)(1). This computation shall be performed as follows.

(i) *Step 1: Compute the debt-to-asset ratio of the related United States shareholder.* The debt-to-asset ratio of the related United States shareholder is the ratio between—

(A) The average month-end debt level of the related United States shareholder taking into account debt owing to any obligee who is not a related person as defined in section § 1.861-8T(c)(2), and

(B) The value of assets (tax book or fair market) of the related United States shareholder including stockholdings and obligations of related controlled foreign corporations but excluding stockholdings and obligations of members of the affiliated group (as defined in § 1.861-11T(d)).

(ii) *Step 2: Compute aggregate debt-to-asset ratio of all related controlled foreign corporations.* The aggregate debt-to-asset ratio of all related controlled foreign corporations is the ratio between—

(A) The average aggregate month-end debt level of all related controlled foreign corporations for their taxable years ending during the related United States shareholder's taxable year taking into account only indebtedness owing to persons other than the related United States shareholder or the related United States shareholder's other related controlled foreign corporations ("third party indebtedness"), and

(B) The aggregate value (tax book or fair market) of the assets of all related controlled foreign corporations for their taxable years ending during the related United States shareholder's taxable year excluding stockholdings in and obligations of the related United States shareholder or the related United States shareholder's other related controlled foreign corporations.

(iii) *Step 3: Compute aggregate related person debt of all related controlled foreign corporations.* This amount equals the average aggregate month-end debt level of all related controlled foreign corporations for their taxable years ending with or within the related United States shareholder's taxable year, taking into account only debt which is owned to the related United States shareholder ("related person indebtedness").

(iv) *Step 4: Computation of excess related person indebtedness and computation of the income therefrom—*

(A) *General rule.* If the ratio computed under step 2 is less than applicable percentage of the ratio computed under step 1, the taxpayer shall add to the aggregate third party indebtedness of all related controlled foreign corporations determined under paragraph (e)(1)(ii)(A) of this section that portion of the related person indebtedness computed under step 3 that, when combined with the aggregate third party indebtedness of all controlled foreign corporations, makes the ratio computed under step 2 equal to applicable percentage of the ratio computed under step 1. The amount of aggregate related person debt that is so added to the aggregate third party debt of related controlled foreign corporations is considered to constitute excess related person indebtedness. For purposes of this paragraph (e)(1)(iv)(A), the term "applicable percentage" means the designated percentages for taxable years beginning during the following calendar years:

Taxable years beginning in	Applicable percentage
1988.....	50
1989.....	65
1990 and thereafter.....	80

(B) *Elective quadratic formula.* In calculating the amount of excess related party indebtedness of related controlled foreign corporations, the United States shareholder's debt-to-asset ratio may be adjusted to reflect the amount by which its debt and assets would be reduced had the related controlled foreign corporations incurred the excess related party indebtedness directly to third parties. In such case, the ratio computed in Step 1 is adjusted to reflect a reduction of both portions of the ratio by the amount of excess related person indebtedness as computed under this paragraph (e)(1)(ii)(A). Excess related person indebtedness may be computed under the following formula, under which excess related person indebtedness equals the smallest positive amount (not exceeding the aggregate amount of related controlled foreign corporation indebtedness) that is a solution to the following formula (with X equalling the amount of excess related person indebtedness):



$$\frac{\text{Aggregate third party debt of related US shareholder} - X}{\text{US shareholder assets} - X} \times \text{Applicable percentage for year} = \frac{\text{Aggregate third party debt of related CFCs} + X}{\text{Related CFC assets}}$$

Guidance concerning the solution of this equation is set forth in *Example (2)* of § 1.861-12(k).

(C) *Computation of interest income received on excess related party indebtedness.* The amount of interest income received on excess related person indebtedness equals the total interest income on related person indebtedness derived by the related United States shareholder during the taxable year multiplied by the ratio of excess related person indebtedness over the aggregate related person indebtedness for the taxable year.

(v) *Step 5: Determine the aggregate amount of related controlled foreign corporation obligations held by the related United States shareholder in each limitation category.* The aggregate amount of related controlled foreign corporation obligations held by the related United States shareholder in each limitation category equals the sum of the value of all such obligations in each limitation category. Solely for purposes of this paragraph (e)(1)(v), each debt obligation in a related controlled foreign corporation held by a related United States shareholder shall be attributed to separate limitation categories in the same manner as the stock of the obligor would be attributed under the rules of § 1.861-12T(c)(3), whether or not such stock is held directly by such related United States shareholder.

(vi) *Direct allocation of United States shareholder third party interest expense.* Third party interest expense of the related United States shareholder equal to the amount of interest income received on excess related person indebtedness as determined in step 4 shall be allocated among the various separate limitation categories in proportion to the relative aggregate amount of related controlled foreign corporation obligations held by the related United States shareholder in each such category, as determined under step 5. The remaining portion of third party interest expense will be apportioned as provided in §§ 1.861-8T through 1.861-13T, excluding this paragraph.

(2) *Definitions*—(i) *United States shareholder.* For purposes of this paragraph, the term "United States

shareholder" has the same meaning as defined by section 957, except that, in the case of a United States shareholder that is a member of an affiliated group (as defined in § 1.861-11T(d)), the entire affiliated group shall be considered to constitute a single United States shareholder. The term "related United States shareholder" is the United States shareholder (as defined in this paragraph (e)(2)(i)) with respect to which related controlled foreign corporations (as defined in paragraph (e)(2)(ii) of this section) are related within the meaning of that paragraph.

(ii) *Related controlled foreign corporation.* For purposes of this section, the term "related controlled foreign corporation" means any controlled foreign corporation which is a related person (as defined in § 1.861-8T(c)(2)) to a United States shareholder (as defined in paragraph (e)(2)(i) of this section).

(iii) *Value of assets and amount of liabilities.* For purposes of this section, the value of assets is determined under § 1.861-9T(g). Thus, in the case of assets that are denominated in foreign currency, the average of the beginning-of-year and end-of-year values is determined in foreign currency and translated into dollars using exchange rates on the last day of the related United States shareholder's taxable year. In the case of liabilities that are denominated in foreign currency, the average month-end debt level of such liabilities is determined in foreign currency and then translated into dollars using exchange rates on the last day of the related United States shareholder's taxable year.

(3) *Treatment of certain stock.* To the extent that there is insufficient related person indebtedness of all related controlled foreign corporations under step 3 in paragraph (e)(1)(iii) of this section to achieve an equal ratio in step 4 of paragraph (e)(1)(iv) of this section, certain stock held by the related United States shareholder will be treated as related person indebtedness. Such stock includes—

(i) Any stock in the related controlled foreign corporation that is treated in the same manner as debt under the law of any foreign country that grants a

deduction for interest or original issue discount relating to such stock, and

(ii) Any stock in a related controlled foreign corporation that has made loans to, or held stock described in this paragraph (e)(3) in, another related controlled foreign corporation. However, such stock shall be treated as related person indebtedness only to the extent of the principal amount of such loans.

For purposes of computing income from excess related person indebtedness in step 4 of paragraph (e)(1)(iv) of this section, stock that is treated under this paragraph as related person indebtedness shall be considered to yield interest in an amount equal to the interest that would be computed on an equal amount of indebtedness under section 1274. Only dividends actually paid thereon shall be included in gross income for other purposes.

(4) *Adjustments to assets in apportioning other interest expense.* In apportioning interest expense under § 1.861-9T, the value of assets in each separate limitation category for the taxable year as determined under § 1.861-9T(g)(3) shall be reduced (but not below zero) by the principal amount of third party indebtedness of the related United States shareholder the interest expense on which is allocated to each such category under paragraph (e)(1) of this section.

(5) *Exceptions*—(i) *Per company rule.* If—

(A) A related controlled foreign corporation with obligations owing to a related United States shareholder has a greater proportion of passive assets than the proportion of passive assets held by the related United States shareholder,

(B) Such passive assets are held in liquid or short term investments, and

(C) There are frequent cash transfers between the related controlled foreign corporation and the related United States shareholder,

the Commissioner, in his discretion, may choose to exclude such a corporation from other related controlled foreign corporations in the application of the rules of this paragraph (e).

(ii) *Aggregate rule.* If it is determined that, in aggregate, the application of the rules of this paragraph (e) increases a taxpayer's foreign tax credit as



determined under section 901(a), the Commissioner, in his discretion, may choose not to apply the rules of this paragraph. If the Commissioner exercises discretion under this paragraph (e)(5)(ii), then paragraph (e) shall not apply to any extent to any interest expense of the taxpayer.

**§ 1.861-11T Special rules for allocating and apportioning interest expense of an affiliated group of corporations (Temporary regulations.)**

(a) *In general.* Sections 1.861-9T, 1.861-10T, 1.861-12T, and 1.861-13T provide rules that are generally applicable in apportioning interest expense. The rules of this section relate to affiliated groups of corporations and implement section 864(e) (1) and (5), which requires affiliated group allocation and apportionment of interest expense. The rules of this section apply to taxable years beginning after December 31, 1986, except as otherwise provided in § 1.861-13T. Paragraph (b) of this section describes the scope of the application of the rule for the allocation and apportionment of interest expense of affiliated groups of corporations, which is contained in paragraph (c) of this section. Paragraph (d) of this section sets forth the definition of the term "affiliated group" for purposes of this section. Paragraph (e) describes the treatment of loans between members of an affiliated group. Paragraph (f) of this section provides rules concerning the affiliated group allocation and apportionment of interest expense in computing the combined taxable income of a FSC or DISC and its related supplier. Paragraph (g) of this section describes the treatment of losses caused by apportionment of interest expense in the case of an affiliated group that does not file a consolidated return.

(b) *Scope of application—(1) Application of section 864(e) (1) and (5) (concerning the definition and treatment of affiliated groups).* Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) apply to the computation of foreign source taxable income for purposes of section 904 (relating to various limitations on the foreign tax credit). Section 904 imposes separate foreign tax credit limitations on passive income, high withholding interest income, financial services income, shipping income, income consisting of dividends from each noncontrolled section 902 corporation, income consisting of dividends from a DISC or former DISC, taxable income attributable to foreign trade income within the meaning of section 923(b), distributions from a FSC or former FSC, and all other forms of

foreign source income not enumerated above ("general limitation income"). Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) also apply in connection with section 907 to determine reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) also apply to the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) as well as the combined taxable income of the related supplier and a domestic international sales corporation (DISC) (under sections 991 through 997).

(2) *Nonapplication of section 864(e) (1) and (5) (concerning the definition and treatment of affiliated groups).* Section 864(e) (1) and (5) and the portions of this section implementing section 864(e) (1) and (5) do not apply to the computation of subpart F income of controlled foreign corporations (under sections 951 through 964), the computation of combined taxable income of a possessions corporation and its affiliates (under section 936), or the computation of effectively connected taxable income of foreign corporations. For the rules with respect to the allocation and apportionment of interest expenses of foreign corporations other than controlled foreign corporations, see §§ 1.882-4 and 1.882-5.

(c) *General rule for affiliated corporations.* Except as otherwise provided in this section, the taxable income of each member of an affiliated group within each statutory grouping shall be determined by allocating and apportioning the interest expense of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. For purposes of determining these apportionment fractions, stock in corporations within the affiliated group (as defined in section 864(e)(5) and the rules of this section) shall not be taken into account. In the case of an affiliated group of corporations that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502-4. Except as otherwise provided, all the interest expense of all members of the group will be treated as definitely related and therefore allocable to all the gross income of the members of the group and all the assets of all the members of the group shall be taken into account in apportioning this interest expense. For

purposes of this section, the term "taxpayer" refers to the affiliated group (regardless of whether the group files a consolidated return), rather than to the separate members thereof.

(d) *Definition of affiliated group—(1) General rule.* For purposes of the section, in general, the term "affiliated group" has the same meaning as is given that term by section 1504, except that section 936 companies are also included within the affiliated group. Section 1504(a) defines an affiliated group as one or more chains of includible corporations connected through 80-percent stock ownership with a common parent corporation which is an includible corporation (as defined in section 1504(b)). In the case of a corporation that either becomes or ceases to be a member of the group during the course of the corporation's taxable year, only the interest expense incurred by the group member during the period of membership shall be allocated and apportioned as if all members of the group were a single corporation. In this regard, assets held during the period of membership shall be taken into account. Other interest expense incurred by the group member during its taxable year but not during the period of membership shall be allocated and apportioned without regard to other members of the group.

(2) *Inclusion of section 936 corporations—(i)* The exclusion from the affiliated group of section 936 corporations under section 1504(b)(4) is inoperative for purposes of this section. Thus, a possessions corporation meeting the ownership requirements of section 1504(a) with respect to which an election under section 936 is in effect for the taxable year is a member of the affiliated group.

(ii) *Example—(A) Facts.* X is the common parent of Y and Z. XY constitutes an affiliated group of corporations within the meaning of section 1504(a) and uses the tax book value method of apportionment. Y owns all the stock of Z, a possessions corporation with respect to which an election under section 936 is in effect for the taxable year. Z manufactures widgets in Puerto Rico. Y purchases these widgets and markets them exclusively in the United States. Of the three corporations, only Z has foreign source income, which includes both qualified possessions source investment income and general limitation income. For purposes of section 904, Z's qualified possessions source investment income constitutes foreign source passive income. In computing the section 936 benefit, Y and Z have elected the cost sharing method. Of the three corporations, only X has debt and, thus, only X incurs interest expense.

(B) *Analysis.* As provided in paragraph (b)(2) of this section, sections 864(e)(1) and



(5) do not apply in the computation of benefits under section 936(h). The effect of including Z in the affiliated group relates to the fact that X, the only debtor corporation in the group, must, under the asset method described in § 1.861-9T(g), apportion a part of its interest expense to foreign source passive income and foreign source general limitation income. This is because the assets of Z that generate qualified possessions source investment income and general limitation income are included in computing the group apportionment fractions. The result is that, under section 904(f), X has an overall foreign loss in both the passive and general limitation categories, which currently offsets domestic income and must be recaptured against any subsequent years' foreign passive income and general limitation income, respectively, under the rules of that section.

(3) *Treatment of life insurance companies subject to taxation under section 801*—(i) *General rule.* A life insurance company that is subject to taxation under section 801 shall be considered to constitute a member of the affiliated group composed of companies not taxable under section 801 only if a parent corporation so elects under section 1504(c)(2)(A) of the Code. If a parent does not so elect, no adjustments shall be required with respect to such an insurance company under paragraph (g) of this section.

(ii) *Treatment of stock.* Stock of a life insurance company that is subject to taxation under section 801 that is not included in an affiliated group shall be disregarded in the allocation and apportionment of the interest expense of such affiliated group.

(4) *Treatment of certain financial corporations*—(i) *In general.* In the case of an affiliated group (as defined in paragraph (d)(1) of this section), any member that constitutes financial corporations as defined in paragraph (d)(4)(ii) of this section shall be treated as a separate affiliated group consisting of financial corporations (the "financial group"). The members of the group that do not constitute financial corporations shall be treated as members of a separate affiliated group consisting of nonfinancial corporations ("the nonfinancial group").

(ii) *Financial corporation defined.* The term "financial corporation" means any corporation which meets all of the following conditions:

(A) It is described in section 581 (relating to the definition of a bank) or section 591 (relating to the deduction for dividends paid on deposits by mutual savings banks, cooperative banks, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations);

(B) Its business is predominantly with persons other than related persons (within the meaning of section 864(d)(4) and the regulations thereunder) or their customers; and

(C) It is required by state or Federal law to be operated separately from any other entity which is not such an institution.

(iii) *Treatment of bank holding companies.* The total aggregate interest expense of any member of an affiliated group that constitutes a bank holding company subject to regulation under the Bank Holding Company Act of 1956 shall be prorated between the financial group and the nonfinancial group on the basis of the assets in the financial and nonfinancial groups. For purposes of making this proration, the assets of each member of each group, and not the stock basis in each member, shall be taken into account. Any direct or indirect subsidiary of a bank holding company that is predominantly engaged in the active conduct of a banking, financing, or similar business shall be considered to be a financial corporation for purposes of this paragraph (d)(4). The interest expense of the bank holding company must be further apportioned in accordance with § 1.861-9T(f) to the various section 904(d) categories of income contained in both the financial group and the nonfinancial group on the basis of the assets owned by each group. For purposes of computing the apportionment fractions for each group, the assets owned directly by a bank holding company within each limitation category described in section 904(d)(1) (other than stock in affiliates or assets described in § 1.861-9T(f)) shall be treated as owned pro rata by the nonfinancial group and the financial group based on the relative amounts of investments of the bank holding company in the nonfinancial group and financial group.

(iv) *Consideration of stock of the members of one group held by members of the other group.* In apportioning interest expense, the nonfinancial group shall not take into account the stock of any lower-tier corporation that is treated as a member of the financial group under paragraph (d)(4)(i) of this section. Conversely, in apportioning interest expense, the financial group shall not take into account the stock of any lower-tier corporation that is treated as a member of the nonfinancial group under paragraph (d)(4)(i) of this section. For the treatment of loans between members of the financial group and members of the nonfinancial group, see paragraph (e)(1) of this section.

(5) *Example*—(i) *Facts.* X, a domestic corporation which is not a bank holding

company, is the parent of domestic corporations Y and Z. Z owns 100 percent of the stock Z1, which is also a domestic corporation. X, Y, Z, and Z1 were organized after January 1, 1987, and constitute an affiliated group within the meaning of paragraph (d)(1) of this section. Y and Z are financial corporations described in paragraph (d)(4) of this section. X also owns 25 percent of the stock of A, a domestic corporation. Y owns 25 percent of the voting stock of B, a foreign corporation that is not a controlled foreign corporation. Z owns less than 10 percent of the voting stock of C, another foreign corporation. The foreign source income generated by Y's or Z's direct assets is exclusively financial services income. The foreign source income generated by X's or Z1's direct assets is exclusively general limitation income. X and Z1 are not financial corporations described in paragraph (d)(4)(ii) of this section. Y and Z, therefore, constitute a separate affiliated group apart from X and Z1 for purposes of section 864(e). The combined interest expense of Y and Z of \$100,000 (\$50,000 each) is apportioned separately on the basis of their assets. The combined interest expense of X and Z1 of \$50,000 (\$25,000 each) is allocated on the basis of the assets of the XZ1 group.

Analysis of the YZ group assets	
Adjusted basis of assets of the YZ group that generate foreign source financial services income (excluding stock of foreign subsidiaries not included in the YZ affiliated group).....	\$200,000
Z's basis in the C stock (not adjusted by the allocable amount of C's earnings and profits because Z owns less than 10 percent of the stock) which would be considered to generate passive income in the hands of a nonfinancial services entity but is considered to generate financial services income when in the hands of Z, a financial services entity .....	\$100,000
Y's basis in the B stock (adjusted by the allocable amount of B's earnings and profits) which generates dividends subject to a separate limitation for B dividends.....	\$100,000
Adjusted basis of assets of the YZ group that generate U.S. source income .....	\$600,000
Total assets .....	\$1,000,000
Analysis of the XZ1 group assets	
Adjusted basis of assets of the XZ1 group that generate foreign source general limitation income .....	\$500,000
Adjusted basis of assets of the XZ1 group other than A stock that generate domestic source income .....	\$1,900,000



X's basis in the A stock adjusted by the allocable amount of A's earnings and profits .....	\$100,000
Total domestic assets .....	\$2,000,000
Total assets .....	\$2,500,000

(ii) *Allocation.* No portion of the \$50,000 deduction of the YZ group is definitely related solely to specific property within the meaning of § 1.861-10T. Thus, the YZ group's deduction for interest is related to all its activities and properties. Similarly, no portion of the \$50,000 deduction of the XZ1 group is definitely related solely to specific property within the meaning of § 1.861-10T. Thus, the XZ1 group's deduction for interest is related to all its activities and properties.

(iii) *Apportionment.* The YZ group would apportion its interest expense as follows:

To gross financial services income from sources outside the United States:

$$\$50,000 \times \frac{\$300,000}{\$1,000,000} = \$15,000$$

To gross income subject to a separate limitation for dividends from B:

$$\$50,000 \times \frac{\$100,000}{\$1,000,000} = \$5,000$$

To gross income from sources inside the United States:

$$\$50,000 \times \frac{\$600,000}{\$1,000,000} = \$30,000$$

The XZ1 group would apportion its interest expense as follows:

To gross general limitation income from sources outside the United States:

$$\$50,000 \times \frac{\$500,000}{\$2,500,000} = \$10,000$$

To gross income from sources inside the United States:

$$\$50,000 \times \frac{\$2,000,000}{\$2,500,000} = \$40,000$$

(6) *Certain unaffiliated corporations.* Certain corporations that are not described in paragraph (d)(1) of this section will nonetheless be considered to constitute affiliated corporations for purposes of §§ 1.861-9T through 1.861-13T. These corporations include:

(i) Any includible corporation (as defined in section 1504(b) without regard to section 1504(b)(4)) if 80 percent of either the vote or value of all outstanding stock of such corporation is owned directly or indirectly by an includible corporation or by members of an affiliated group, and

(ii) Any foreign corporation if 80 percent of either the vote or value of all outstanding stock of such corporation is owned directly or indirectly by members of an affiliated group, and if more than 50 percent of the gross income of such corporation for the taxable year is effectively connected with the conduct of a United States trade or business. If 80 percent or more of the gross income of such corporation is effectively connected income, then all the assets of such corporation and all of its interest expense shall be taken into account. If between 50 and 80 percent of the gross income of such corporation is effectively connected income, then only the assets of such corporation that generate effectively connected income and a percentage of its interest expense equal to the percentage of its assets that generate effectively connected income shall be taken into account.

The attribution rules of section 318 shall apply in determining indirect ownership under this paragraph (d)(6). The Commissioner shall have the authority to disregard trusts, partnerships, and pass-through entities that break affiliated status. Corporations described in this paragraph (d)(6) shall be considered to constitute members of an affiliated group that does not file a consolidated return and shall therefore be subject to the limitations imposed under paragraph (g) of this section. The affiliated group filing a consolidated return shall be considered to constitute a single corporation for purposes of applying the rules of paragraph (g) of this section.

(e) *Loans between members of an affiliated group—(1) General rule.* In the case of loans (including any receivable) between members of an affiliated group, as defined in paragraph (d) of this section, for purposes of apportioning interest expense, the indebtedness of the member borrower shall not be considered an asset of the member lender. However, in the case of members of separate financial and nonfinancial groups under paragraph (d)(4) of this section, the indebtedness of the member borrower shall be considered an asset of the member lender and such asset shall be characterized by reference to the member lender's income from the asset as determined under paragraph (e)(2)(ii) of this section. For purposes of this

paragraph (e), the terms "related person interest income" and "related person interest payment" refer to interest paid and received by members of the same affiliated group as defined in paragraph (d) of this section.

(2) *Treatment of interest expense within the affiliated group—(i) General rule.* A member borrower shall deduct related person interest payments in the same manner as unrelated person interest expense using group apportionment fractions computed under § 1.861-9T(f). A member lender shall include related person interest income in the same class of gross income as the class of gross income from which the member borrower deducts the related person interest payment.

(ii) *Special rule for loans between financial and nonfinancial affiliated corporations.* In the case of a loan between two affiliated corporations only one of which constitutes a financial corporation under paragraph (d)(4) of this section, the member borrower shall allocate and apportion related person interest payments in the same manner as unrelated person interest expense using group apportionment fractions computed under § 1.861-9T(f). The source of the related person interest income to the member lender shall be determined under section 861(a)(1).

(iii) *Special rule for high withholding tax interest.* In the case of an affiliated corporation that pays interest that is high withholding tax interest under § 1.904-5(f)(1) to another affiliated corporation, the interest expense of the payor shall be allocated to high withholding tax interest.

(3) *Back-to-back loans.* If a member of the affiliated group makes a loan to a nonmember who makes a loan to a member borrower, the rule of paragraphs (e) (1) and (2) of this section shall apply, in the Commissioner's discretion, as if the member lender made the loan directly to the member borrower, provided that the loans constitute a back-to-back loan transaction. Such loans will constitute a back-to-back loan for purposes of this paragraph (e) if the loan by the nonmember would not have been made or maintained on substantially the same terms irrespective of the loan of funds by the lending member to the nonmember or other intermediary party.

(4) *Examples.* The rules of this paragraph (e) may be illustrated by the following examples.

*Example (1).* X, a domestic corporation, is the parent of Y, a domestic corporation. X and Y were organized after January 1, 1987, and constitute an affiliated group within the



meaning of paragraph (d)(1) of this section. Among X's assets is the note of Y for the amount of \$100,000. Because X and Y are members of an affiliated group, Y's note does not constitute an asset for purposes of apportionment. The apportionment fractions for the relevant tax year of the XY group are 50 percent domestic, 40 percent foreign general, and 10 percent foreign passive. Y deducts its related person interest payment using those apportionment fractions. Of the \$10,000 in related person interest income received by X, \$5,000 consists of domestic source income, \$4,000 consists of foreign general limitation income, and \$1,000 consists of foreign passive income.

*Example (2).* X is a domestic corporation organized after January 1, 1987. X owns all the stock of Y, a domestic corporation. On June 1, 1987, X loans \$100,000 to Z, an unrelated person. On June 2, 1987, Z makes a loan to Y with terms substantially similar to those of the loan from X to Z. Based on the facts and circumstances of the transaction, it is determined that Z would not have made the loan to Y on the same terms if X had not made the loan to Z. Because the transaction constitutes a back-to-back loan, as defined in paragraph (e)(3) of this section, the Commissioner may require, in his discretion, that neither the note of Y nor the note of Z may be considered an asset of X for purposes of this section.

(f) *Computations of combined taxable income.* In the computation of the combined taxable income of any FSC or DISC and its related supplier which is a member of an affiliated group under the pricing rules of sections 925 or 994, the combined taxable income of such FSC or DISC and its related supplier shall be reduced by the portion of the total interest expense of the affiliated group that is incurred in connection with those assets of the group used in connection with export sales involving that FSC or DISC. This amount shall be computed by multiplying the total interest expense of the affiliated group and interest expense of the FSC or DISC by a fraction the numerator of which is the assets of the affiliated group and of the FSC or DISC generating foreign trade income or gross income attributable to qualified export receipts, as the case may be, and the denominator of which is the total assets of the affiliated group and the FSC or DISC. Under this rule, interest of other group members may be attributed to the combined taxable income of a FSC or DISC and its related supplier without affecting the amount of interest otherwise deductible by the FSC or DISC, the related supplier or other member of the affiliated group. The FSC or DISC is entitled to only the statutory portion of the combined taxable income, net of any deemed interest expense, which determines the commission paid to the FSC or DISC or the transfer price of qualifying export property sold to the FSC or DISC.

(g) *Losses created through apportionment—(1) General rules.* In the case of an affiliated group that is eligible to file, but does not file, a consolidated return and in the case of any corporation described in paragraph (d)(6) of this section, the foreign tax credits in any separate limitation category are limited to the credits computed under the rules of this paragraph (g). As a consequence of the affiliated group allocation and apportionment of interest expense required by section 864(e)(1) and this section, interest expense of a group member may be apportioned for section 904 purposes to a limitation category in which that member has no gross income, resulting in a loss in that limitation category. The same is true in connection with any expense other than interest that is subject to apportionment under the rules of section 864(e)(6) of the Code. Any reference to "interest expense" in this paragraph (g) shall be treated as including such expenses. For purposes of this paragraph, the term "limitation category" includes domestic source income, as well as the types of income described in section 904(d)(1) (A) through (I). A loss of one affiliate in a limitation category will reduce the income of another member in the same limitation category if a consolidated return is filed. (See § 1.1502-4.) If a consolidated return is not filed, this netting does not occur. Accordingly, in such a case, the following adjustments among members are required in order to give effect to the group allocation of interest expense:

(i) Losses created through group apportionment of interest expense in one or more limitation categories within a given member must be eliminated; and

(ii) A corresponding amount of income of other members in the same limitation category must be recharacterized.

Such adjustments shall be accomplished, in accordance with paragraph (g)(2) of this section, without changing the total taxable income of any member and before the application of section 904(f). Section 904(f) (including section 904(f)(5)) does not apply to a loss created through the apportionment of interest expense to the extent that the loss is eliminated pursuant to paragraph (g)(2)(ii) of this section. For purposes of this section, the terms "limitation adjustment" and "recharacterization" mean the recharacterization of income in one limitation category as income in another limitation category.

(2) *Mechanics of computation—(i) Step 1: Computation of consolidated taxable income.* The members of an affiliated group must first allocate and

apportion all other deductible expenses other than interest. The members must then deduct from their respective gross incomes within each limitation category interest expense apportioned under the rules of § 1.861-9T(f). The taxable income of the entire affiliated group within each limitation category is then totalled.

(ii) *Step 2: Loss offset adjustments.* If, after step 1, a member has losses in a given limitation category or limitation categories created through apportionment of interest expense, any such loss (i.e., the portion of such loss equal to interest expense) shall be eliminated by offsetting that loss against taxable income in other limitation categories of that member to the extent of the taxable income of other members within the same limitation category as the loss. If the member has taxable income in more than one limitation category, then the loss shall offset taxable income in all such limitation categories on a pro rata basis. If there is insufficient domestic income of the member to offset the net losses in all foreign limitation categories caused by the apportionment of interest expense, the losses in each limitation category shall be recharacterized as domestic losses to the extent of the taxable income of other members in the same respective limitation categories. After these adjustments are made, the income of the entire affiliated group within each limitation category is totalled again.

(iii) *Step 3: Determination of amount subject to recharacterization.* In order to determine the amount of income to be recharacterized in step 4, the income totals computed under step 1 in each limitation category shall be subtracted from the income totals computed under step 2 in each limitation category.

(iv) *Step 4: Recharacterization.* Because any differences determined under step 3 represent deviations from the consolidated totals computed under Step 1, such differences (in any limitation category) must be eliminated.

(A) *Limitation categories to be reduced.* In the case of any limitation category in which there is a positive change, the income of group members with income in that limitation category must be reduced on a pro rata basis (by reference to net income figures as determined under Step 2) to the extent of such positive change ("limitation reductions"). Each member shall separately compute the sum of the limitation reductions.

(B) *Limitation categories to be increased.* In any case in which only one limitation category has a negative change in Step 3, the sum of the



limitation reductions within each member is added to that limitation category. In the case in which multiple limitation categories have negative changes in Step 3, the sum of the limitation reductions within each member is prorated among the negative change limitation categories based on the ratio that the negative change for the entire group in each limitation category bears to the total of all negative changes for the entire group in all limitation categories.

(3) *Examples.* The following examples illustrate the principles of this paragraph.

*Example (1)—(i) Facts.* X, a domestic corporation, is the parent of domestic corporations Y and Z. X, Y, and Z were organized after January 1, 1987, constitute an affiliated group within the meaning of paragraph (d)(1) of this section, but do not file a consolidated return. The XYZ group apportions its interest expense on the basis of the fair market value of its assets. X, Y, and Z have the following assets, interest expense, and taxable income before apportioning interest expense:

Assets	X	Y	Z	Total
Domestic .....	2,000.00	0	1,000.00	3,000.00
Foreign Passive .....	0	50.00	50.00	100.00
Foreign General .....	0	700.00	200.00	900.00
Interest expense .....	48.00	12.00	80.00	140.00
Taxable income (pre-interest):				
Domestic .....	100.00	0	63.00	163.00
Foreign Passive .....	0	5.00	5.00	10.00
Foreign General .....	0	60.00	35.00	95.00

(ii) *Step 1: Computation of consolidated taxable income.* Each member of the XYZ group apportions its interest expense according to group apportionment ratios determined under the asset method described in § 1.861-9T(f), yielding the following results:

Apportioned interest expense	X	Y	Z	Total
Domestic .....	36.00	9.00	60.00	105.00
Foreign Passive .....	1.20	0.30	2.00	3.50
Foreign General .....	10.80	2.70	18.00	31.50
Total .....	48.00	12.00	80.00	140.00

The members of the group then compute taxable income within each category by deducting the apportioned interest expense from the amounts of pre-interest taxable income specified in the facts in paragraph (i), yielding the following results:

Taxable income	X	Y	Z	Total
Domestic .....	64.00	-9.00	3.00	58.00
Foreign Passive .....	-1.20	4.70	3.00	6.50
Foreign General .....	-10.80	57.30	17.00	63.50

Taxable income	X	Y	Z	Total
Total .....	52.00	53.00	23.00	128.00

(iii) *Step 2: Loss offset adjustments.* Because X and Y have losses created through apportionment, these losses must be eliminated by reducing taxable income of the member in other limitation categories. Because X has a total of \$12 in apportionment losses and because it has only one limitation category with income (i.e., domestic), domestic income must be reduced by \$12, thus eliminating its apportionment losses. Because Y has a total of \$9 in apportionment losses and because it has two limitation categories with income (i.e., foreign passive and foreign general limitation), the income in these two limitation categories must be reduced on a pro rata basis in order to eliminate its apportionment losses. In summary, the following adjustments are required:

Loss offset adjustments	X	Y	Z	Total
Domestic .....	-12.00	+9.00	0	-3.00
Foreign Passive .....	+1.20	-0.68	0	+0.52
Foreign General .....	+10.80	-8.32	0	+2.48

These adjustments yield the following adjusted taxable income figures:

Adjusted taxable income	X	Y	Z	Total
Domestic .....	52.00	0	3.00	55.00
Foreign Passive .....	0	4.02	3.00	7.02
Foreign General .....	0	48.98	17.00	65.98
Total .....	52.00	53.00	23.00	128.00

(iv) *Step 3: Determination of amount subject to recharacterization.* The adjustments performed under Step 2 led to a change in the group's taxable income within each limitation category. The total loss offset adjustments column shown in paragraph (iii) above shows the net deviations between Step 1 and 2.

(v) *Step 4: Recharacterization.* The loss offset adjustments yield a positive change in the foreign passive and the foreign general limitation categories. Y and Z both have income in these limitation categories. Accordingly, the income of Y and Z in each of these limitation categories must be reduced on a pro rata basis (by reference to the adjusted taxable income figures) to the extent of the positive change in each limitation category. The total positive change in the foreign passive limitation category is \$0.52. The adjusted taxable income of Y in the foreign passive limitation category is \$4.02 and the adjusted taxable income of Z in the foreign passive limitation category is \$3.00. Therefore, \$0.30 is drawn from Y and \$0.22 is drawn from Z. The total positive change in the foreign general limitation category is \$2.48. The adjusted taxable income of Y in the foreign general limitation category is \$48.98, and the adjusted taxable income of Z in the foreign general limitation category is

\$17. Therefore, \$1.84 is drawn from Y and \$0.64 is drawn from Z.

The members must then separately compute the sum of the limitation reductions. Y has limitation reductions of \$0.30 in the foreign passive limitation category and \$1.84 in the foreign general limitation category, yielding total limitation reduction of \$2.14. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Y's domestic income is increased by \$2.14. Z has limitation reductions of \$0.22 in the foreign passive limitation category and \$0.64 in the foreign general limitation category, yielding total limitation reductions of \$0.86. Under these facts, domestic income is the only limitation category of Z requiring a positive adjustment. Accordingly, Z's domestic income is increased by \$0.86.

Recharacterization adjustments	X	Y	Z	Total
Domestic .....	0	+2.14	+0.86	+3.00
Foreign Passive .....	0	-0.30	-0.22	-0.52
Foreign General .....	0	-1.84	-0.64	-2.48

These recharacterization adjustments yield the following final taxable income figures:

Final taxable income	X	Y	Z	Total
Domestic .....	52.00	2.14	3.86	58.00
Foreign Passive .....	0	3.72	2.78	6.50
Foreign General .....	0	47.14	16.36	63.50
Total .....	52.00	53.00	23.00	128.00

*Example (2)—(i) Facts.* X, a domestic corporation, is the parent of domestic corporations Y and Z. X, Y, and Z were organized after January 1, 1987, constitute an affiliated group within the meaning of paragraph (d)(1) of this section, but do not file a consolidated return. Moreover, X has served as the sole borrower in the group and, as a result, has sustained an overall loss. The XYZ group apportions its interest expense on the basis of the fair market value of its assets. X, Y, and Z have the following assets, interest expense, and taxable income before interest expense:

Assets	X	Y	Z	Total
Domestic .....	2,000	0	1,000	3,000
Foreign Passive .....	0	50	50	100
Foreign General .....	0	700	200	900
Interest Expense .....	140	0	0	140
Taxable income (pre-interest):				
Domestic .....	100	0	100	200
Foreign Passive .....	0	5	5	10
Foreign General .....	0	70	35	105

(ii) *Step 1: Computation of consolidated taxable income.* Each member of the XYZ group apportions its interest expense according to group apportionment ratios determined under the asset method described in § 1.861-9T(g), yielding the following results:



Apportioned interest expense	X	Y	Z	Total
Domestic.....	105.00	0	0	105.00
Foreign Passive.....	3.50	0	0	3.50
Foreign General.....	31.50	0	0	31.50
Total.....	140.00	0	0	140.00

The members of the group then compute taxable income within each category by deducting the apportioned interest expense from the amounts of pre-interest taxable income specified in the facts in paragraph (i), yielding the following results:

Taxable income	X	Y	Z	Total
Domestic.....	-5.00	0	100.00	95.00
Foreign Passive.....	-3.50	5.00	5.00	6.50
Foreign General.....	-31.50	70.00	35.00	73.50
Total.....	-40.00	75.00	140.00	175.00

(iii) *Step 2: Loss offset adjustment.* Because X has insufficient domestic income to offset the sum of the losses in the foreign limitation categories caused by apportionment, the amount of apportionment losses in each limitation category shall be recharacterized as domestic losses to the extent of taxable income of other members in the same limitation category. This is accomplished by adding to each foreign limitation categories an amount equal to the loss therein and by subtracting the sum of such foreign losses from domestic income, as follows:

Loss offset adjustments	X	Y	Z	Total
Domestic.....	-35.00	0	0	-35.00
Foreign Passive.....	+3.50	0	0	+3.50
Foreign General.....	+31.50	0	0	+31.50

These adjustments yield the following adjusted taxable income figures:

Adjusted taxable income	X	Y	Z	Total
Domestic.....	-40	0	100	60
Foreign Passive.....	0	5	5	10
Foreign General.....	0	70	35	105
Total.....	-40	75	140	175

(iv) *Step 3: Determination of amount subject to recharacterization.* The adjustments performed under Step 2 led to a change in the group's taxable income within each limitation category. The total loss offset adjustment column shown in paragraph (iii) above shows the net deviations between Steps 1 and 2.

(v) *Step 4: Recharacterization.* The loss offset adjustments yield a positive change in the foreign passive and the foreign general limitation categories. Y and Z both have income in these limitation categories. Accordingly, the income of Y and Z in each of these limitation categories must be reduced on a pro rata basis (by reference to the adjusted taxable income figures) to the extent of the positive change in each limitation

category. The total positive change in the foreign passive limitation category is \$3.50. The adjusted taxable income of Y in the foreign passive limitation category is \$5, and the adjusted taxable income of Z in the foreign passive limitation category is \$5. Therefore, \$1.75 is drawn from Y and \$1.75 is drawn from Z. The total positive change in the foreign general limitation category is \$31.50. The adjusted taxable income of Y in the foreign general limitation category is \$70, and the adjusted taxable income of Z in the foreign general limitation category is \$35. Therefore, \$21 is drawn from Y and \$10.50 is drawn from Z.

The members must then separately compute the sum of the limitation reductions. Y has limitation reductions of \$1.75 in the foreign passive limitation category and \$21 in the foreign general limitation category, yielding total limitation reductions of \$22.75. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Y's domestic income is increased by \$22.75. Z has limitation reductions of \$1.75 in the foreign passive limitation category and \$10.50 in the foreign general limitation category, yielding total limitation reductions of \$12.25. Under these facts, domestic income is the only limitation category requiring a positive adjustment. Accordingly, Z's domestic income is increased by \$12.25.

Recharacterization adjustments	X	Y	Z	Total
Domestic.....	0	+22.75	+12.25	+35.00
Foreign Passive.....	0	-1.75	-1.75	-3.50
Foreign General.....	0	-21.00	-10.50	-31.50

These recharacterization adjustments yield the following final taxable income figures:

Final taxable income	X	Y	Z	Total
Domestic.....	-40.00	22.75	112.25	95.00
Foreign Passive.....	0	3.25	3.25	6.50
Foreign General.....	0	49.00	24.50	73.50
Total.....	-40.00	75.00	140.00	175.00

#### § 1.861-12T Characterization rules and adjustments for certain assets (Temporary regulations.)

(a) *In general.* These rules are applicable to taxpayers in apportioning expenses under an asset method to income in various separate limitation categories under section 904(d), and supplement other rules provided in §§ 1.861-9T, 1.861-10T, and 1.861-11T. The rules of this section apply to taxable years beginning after December 31, 1986, except as otherwise provided in § 1.861-13T. Paragraph (b) of this section describes the treatment of inventories. Paragraph (c)(1) of this section concerns the treatment of various stock assets. Paragraph (c)(2) of this section describes a basis adjustment for stock in nonaffiliated 10 percent owned

corporations. Paragraph (c)(3) of this section sets forth rules for characterizing the stock in controlled foreign corporations. Paragraph (c)(4) of this section describes the treatment of stock of noncontrolled section 902 corporations. Paragraph (d)(1) of this section concerns the treatment of notes. Paragraph (d)(2) of this section concerns the treatment of the notes of controlled foreign corporations. Paragraph (e) of this section describes the treatment of certain portfolio securities that constitute inventory or generate income primarily in the form of gains. Paragraph (f) of this section describes the treatment of assets that are subject to the capitalization rules of section 263A. Paragraph (g) of this section concerns the treatment of FSC stock and of assets of the related supplier generating foreign trade income. Paragraph (h) of this section concerns the treatment of DISC stock and of assets of the related supplier generating qualified export receipts. Paragraph (i) of this section is reserved. Paragraph (j) of this section sets forth an example illustrating the rules of this section, as well as the rules of § 1.861-9T(g).

(b) *Inventories.* Inventory must be characterized by reference to the source and character of sales income, or sales receipts in the case of LIFO inventory, from that inventory during the taxable year. If a taxpayer maintains separate inventories for any federal tax purpose, including the rules for establishing pools of inventory items under sections 472 and 474 of the Code, each separate inventory shall be separately characterized in accordance with the previous sentence.

(c) *Treatment of stock—(1) In general.* Subject to the adjustment and special rules of paragraphs (c) and (e) of this section, stock in a corporation is taken into account in the application of the asset method described in § 1.861-9T(g). However, an affiliated group (as defined in § 1.861-11T(d)) does not take into account the stock of any member in the application of the asset method.

(2) *Basis adjustment for stock in nonaffiliated 10 percent owned corporations—(i) Taxpayers using the tax book value method.* For purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any stock in a 10 percent owned corporation owned directly by the taxpayer shall be—

(A) Increased by the amount of the earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock and accumulated during the period the taxpayer or other members of its



affiliated group held 10 percent or more of such stock, or

(B) Reduced (but not below zero) by any deficit in earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock for such period.

Solely for purposes of this section, a taxpayer's basis in the stock of a controlled foreign corporation shall not include any amount included in basis under section 961 or 1293(d) of the Code. For purposes of this paragraph (c)(2), earnings and profits and deficits are computed under the rules of section 312 and, in the case of a foreign corporation, section 902 and the regulations thereunder for taxable years of the 10 percent owned corporation ending on or before the close of the taxable year of the taxpayer. The rules of section 1248 and the regulations thereunder shall apply to determine the amount of earnings and profits that is attributable to stock without regard to whether earned and profits (or deficits) were derived (or incurred) during taxable years beginning before or after December 31, 1962. This adjustment is to be made annually and is noncumulative. Thus, the adjusted basis of the stock (determined without prior years' adjustments under this section) is to be adjusted annually by the amount of accumulated earnings and profits (or any deficit) attributable to such stock as of the end of each year. Earnings and profits or deficits of a qualified business unit that has a functional currency other than the dollar must be computed under this paragraph (c)(2) in functional currency and translated into dollars using the exchange rate at the end of the taxpayer's current taxable year with respect to which interest is being allocated (and not the exchange rates for the years in which the earnings and profits or deficits were derived or incurred).

(ii) *10 percent owned corporation defined*—(A) *In general.* The term "10 percent owned corporation" means any corporation (domestic or foreign)—

(1) Which is not included within the taxpayer's affiliated group as defined in § 1.861-11T(d) (1) or (6).

(2) In which the members of the taxpayer's affiliated group own directly or indirectly 10 percent or more of the total combined voting power of all classes of the stock entitled to vote, and

(3) Which is taken into account for purposes of apportionment.

(B) *Rule of attribution.* Stock that is owned by a corporation, partnership, or

trust shall be treated as being indirectly owned proportionately by its shareholders, partners, or beneficiaries. For this purpose, a partner's interest in stock held by a partnership shall be determined by reference to the partner's distributive share of partnership income.

(iii) *Earnings and profits of lower-tier corporations taken into account.* For purposes of the adjustment to the basis of the stock of the 10 percent owned corporation owned by the taxpayer under paragraph (c)(2)(i) of this section, the earnings and profits of that corporation shall include its pro rata share of the earnings and profits (or any deficit therein) of each succeeding lower-tier 10 percent owned corporation. Thus, a first-tier 10 percent owned corporation shall combine with its own earnings and profits its pro rata share of the earnings and profits of all such lower-tier corporations. The affiliated group shall then adjust its basis in the stock of the first-tier corporation by its pro rata share of the total combined earnings and profits of the first-tier and the lower-tier corporations. In the case of a 10 percent owned corporation whose tax year does not conform to that of the taxpayer, the taxpayer shall include the annual earnings and profits of such 10 percent owned corporation for the tax year ending within the tax year of the taxpayer, whether or not such 10 percent owned corporation is owned directly by the taxpayer.

(iv) *Special rules for foreign corporations in pre-effective date tax years.* Solely for purposes of determining the adjustment required under paragraph (c)(2)(i) of this section, for tax years beginning after 1912 and before 1987, financial earnings (or losses) of a foreign corporation computed using United States generally accepted accounting principles may be substituted for earnings and profits in making the adjustment required by paragraph (c)(2)(i) of this section. A taxpayer is not required to isolate the financial earnings of a foreign corporation derived or incurred during its period of 10 percent ownership or during the post-1912 taxable years and determine earnings and profits (or deficits) attributable under section 1248 principles to the taxpayer's stock in a 10 percent owned corporation. Instead, the taxpayer may include all historic financial earnings for purposes of this adjustment. If the affiliated group elects to use financial earnings with respect to any foreign corporation, financial earnings must be used by that group with respect to all foreign corporations,

except that earnings and profits may in any event be used for controlled foreign corporations for taxable years beginning after 1962 and before 1987. However, if the affiliated group elects to use earnings and profits with respect to any single controlled foreign corporation for the 1963 through 1986 period, such election shall apply with respect to all its controlled foreign corporations.

(v) *Taxpayers using the fair market value method.* Because the fair market value of any asset which is stock will reflect retained earnings and profits, taxpayers who use the fair market value method shall not adjust stock basis by the amount of retained earnings and profits, as otherwise required by paragraph (c)(2)(i) of this section.

(vi) *Examples.* Certain of the rules of this paragraph (c)(2) may be illustrated by the following examples.

*Example (1).* X, an affiliated group that uses the tax book value method of apportionment, owns 20 percent of the stock of Y, which owns 50 percent of the stock of Z. X's basis in the Y stock is \$1,000. X, Y, and Z have calendar taxable years. The undistributed earnings and profits of Y and Z at year-end attributable to X's period of ownership are \$80 and \$40, respectively. Because Y owns half of the Z stock, X's pro rata share of Z's earnings and profits attributable to X's Y stock is \$4. X's pro rata share of Y's earnings attributable to X's Y stock is \$16. For purposes of apportionment, the tax book value of the Y stock is, therefore, considered to be \$1,020.

*Example (2).* X, an unaffiliated domestic corporation that was organized on January 1, 1987, has owned all the stock of Y, a foreign corporation with a functional currency other than the U.S. dollar, since January 1, 1987. Both X and Y have calendar taxable years. All of Y's assets generate general limitation income. X has a deductible interest expense incurred in 1987 of \$160,000. X apportions its interest expense using the tax book value method. The adjusted basis of its assets that generate domestic income is \$7,500,000. The adjusted basis of its assets that generate foreign source general limitation income (other than the stock of Y) is \$400,000. X's adjusted basis in the Y stock is \$2,000,000. Y has undistributed earnings and profits for 1987 of \$100,000, translated into dollars from Y's functional currency at the exchange rate on the last day of X's taxable year. Because X is required under paragraph (b)(1) of this § 1.861-10T to increase its basis in the Y stock by the computed amount of earnings and profits, X's adjusted basis in the Y stock is considered to be \$2,100,000, and its adjusted basis of assets that generate foreign source general limitation income is, thus, considered to be \$2,500,000. X would apportion its interest expense as follows:

To foreign source general limitation income:



$$\begin{array}{rcl}
 \text{Interest expense} & \times & \frac{\text{Adjusted basis of foreign general limitation assets}}{\text{Adjusted basis of foreign general limitation assets} + \text{Adjusted basis of domestic assets}} \\
 & & \frac{\$2,500,000}{\$2,500,000 + \$7,500,000} \\
 \$160,000 & \times & = \$40,000
 \end{array}$$

To domestic source income:

$$\begin{array}{rcl}
 \text{Interest expense} & \times & \frac{\text{Adjusted basis of domestic assets}}{\text{Adjusted basis of foreign general limitation assets} + \text{Adjusted basis of domestic assets}} \\
 & & \frac{\$7,500,000}{\$2,500,000 + \$7,500,000} \\
 \$160,000 & \times & = \$120,000
 \end{array}$$

(3) *Characterization of stock of controlled foreign corporations*—(i) *In general.* Stock in a controlled foreign corporation (as defined in section 957) shall be characterized as an asset in the various separate limitation categories either on the basis of:

(A) The asset method described in paragraph (c)(3)(ii) of this section, or  
(B) The modified gross income method described in paragraph (c)(3)(iii) of this section.

Stock in a controlled foreign corporation whose interest expense is apportioned on the basis of assets shall be characterized in the hands of its United States shareholders under the asset method described in paragraph (c)(3)(ii). Stock in a controlled foreign corporation whose interest expense is apportioned on the basis of gross income shall be characterized in the hands of its United States shareholders under the gross income method described in paragraph (c)(3)(iii).

(ii) *Asset method.* Under the asset method, the taxpayer characterizes the tax book value or fair market value of the stock of a controlled foreign corporation based on an analysis of the assets owned by the controlled foreign corporation during the foreign corporation's taxable year that ends with or within the taxpayer's taxable year. This process is based on the application of § 1.861-9T(g) at the level of the controlled foreign corporation. In

the case of a controlled foreign corporation that owns stock in one or more lower-tier controlled foreign corporations in which the United States taxpayer is a United States shareholder, the characterization of the tax book value of the fair market value of the stock of the first-tier controlled foreign corporation to the various separate limitation categories of the affiliated group must take into account the stock in lower-tier corporations. For this purpose, the stock of each such lower-tier corporation shall be characterized by reference to the assets owned during the lower-tier corporation's taxable year that ends during the taxpayer's taxable year. The analysis of assets within a chain of controlled foreign corporations must begin at the lowest-tier controlled foreign corporation and proceed up the chain to the first-tier controlled foreign corporation. For purposes of this paragraph (c), the value of any passive asset to which related person interest is allocated under § 1.904-5(c)(2)(ii) must be reduced by the principal amount of indebtedness on which such interest is incurred. Furthermore, the value of any asset to which interest expense is directly allocated under § 1.861-10T must be reduced as provided in § 1.861-9T(g)(2)(iii). See § 1.861-9T(h)(5) for further guidance concerning characterization of stock in a related person under the fair market value method.

(iii) *Modified gross income method.* Under the gross income method, the taxpayer characterizes the tax book value of the stock of the first-tier controlled foreign corporation based on the gross income net of interest expense of the controlled foreign corporation (as computed under § 1.861-9T(j)) within each relevant category for the taxable year of the controlled foreign corporation ending with or within the taxable year of the taxpayer. For this purpose, however, the gross income of the first-tier controlled foreign corporation shall include the total amount of net subpart F income of any lower-tier controlled foreign corporation that was excluded under the rules of § 1.861-9T(j)(2)(ii)(B).

(4) *Stock of noncontrolled section 902 corporation*—(i) *General rule.* Because each noncontrolled section 902 corporation constitutes a separate limitation category, the value of such stock, increased to the extent required under paragraph (c)(2) of this section, is attributable solely to each such category.

(ii) *Special rule for separate limitation losses*—(A) *Election.* If, as a result of the allocation and apportionment of interest expense using the asset method described in § 1.861-9T(g), the taxpayer has a loss in the separate limitation category for a given noncontrolled section 902 corporation, the taxpayer



may elect to reallocate interest expense equal to such loss to any other separate limitation category that is in excess credit (without regard to carryovers from other years), to the extent that the reallocation of such interest to such other category does not create a loss in that category. For this purpose, the term "category in excess credit" means any category of income with respect to which the foreign income taxes paid or accrued for the current taxable year exceed the limitation computed under section 904 with respect to such category. The election to reallocate interest expense under this paragraph shall be made in the manner prescribed in § 1.861-9T(f)(3) (relating to the election to use a gross income method for controlled foreign corporations). Furthermore, such election is irrevocable and, thus, cannot be amended by an amended return.

(B) *Example.* X, a domestic corporation organized on January 1, 1987, incurred deductible interest expense in 1987 in the amount of \$1,000,000. X uses the tax book value method of apportionment. X owns 25 percent of the stock of A, a noncontrolled section 902 corporation. At the end of 1987, the tax book value of X's assets by income grouping are as follows:

Domestic.....	\$3,500,000
Foreign general limitation.....	1,000,000
Noncontrolled section 902 corporation.....	500,000

In 1987, A paid no dividends. X received \$100,000 of foreign general limitation income, on which it incurred \$50,000 of tax to foreign governments.

The stock of A constitutes ten percent of X's assets. Therefore, ten percent of X's interest expense (\$100,000) is allocated and apportioned to the separate limitation category for dividends on the A stock. Since A paid no dividends, this amount would constitute a separate limitation loss under the rules of section 904(f)(5).

Because X incurred more tax to foreign governments on its foreign general limitation income than it can credit against its U.S. tax liability, for the current tax year, and because the reallocation of interest expense allocated and apportioned to dividends from A to foreign general limitation income would not create a loss in that category, X may elect to reallocate such interest expense to the foreign general limitation category to the extent of the loss in the separate limitation category for dividends received from A.

(d) *Treatment of notes—(1) General rule.* Subject to the adjustments and special rules of this paragraph (d) and paragraph (e) of this section, all notes held by a taxpayer are taken into account in the application of the asset method described in § 1.861-9T(g). However, the notes of an affiliated corporation are subject to special rules set forth in § 1.861-11T(e). For purposes of this section, the term "notes" means

all interest bearing debt, including debt bearing original issue discount.

(2) *Characterization of related controlled foreign corporation notes.* The debt of a controlled foreign corporation shall be characterized according to the taxpayer's treatment of the interest income derived from that debt obligation after application of the look-through rule of section 904(d)(3)(C). Thus, a United States shareholder includes interest income from a controlled foreign corporation in the same category of income as the category of income from which the controlled foreign corporation deducts the interest expense. See section 954(b)(5) and § 1.904-5(c)(2) for rules concerning the allocation of related person interest payments to the foreign personal holding company income of a controlled foreign corporation.

(e) *Portfolio securities that constitute inventory or generate primarily gains.* Because gain on the sale of securities is sourced by reference to the residence of the seller, a resident of the United States will generally receive domestic source income (and a foreign resident will generally receive foreign source income) upon sale or disposition of securities that otherwise generate foreign source dividends and interest (or domestic source dividends and interest in the case of a foreign resident). Although under paragraphs (c) and (d) of this section securities are characterized by reference to the source and character of dividends and interest, the source and character of income on gain or disposition must also be taken into account for purposes of characterizing portfolio securities if:

(1) The securities constitute inventory in the hands of the holder, or

(2) 80 percent or more of the gross income generated by a taxpayer's entire portfolio of such securities during a taxable year consists of gains.

For this purpose, a portfolio security is a security in any entity other than a controlled foreign corporation with respect to which the taxpayer is a United States shareholder under section 957, a noncontrolled section 902 corporation with respect to the taxpayer, or a 10 percent owned corporation as defined in § 1.861-12(c)(2)(ii). In taking gains into account, a taxpayer must treat all portfolio securities generating foreign source dividends and interest as a single asset and all portfolio securities generating domestic source dividends as a single asset and shall characterize the total value of that asset based on the source of all income and gain generated by those securities in the taxable year.

(f) *Assets funded by disallowed interest—(1) Rule.* In the case of any asset in connection with which interest expense accruing at the end of the taxable year is capitalized, deferred, or disallowed under any provision of the Code, the adjusted basis or fair market value (depending on the taxpayer's choice of apportionment methods) of such an asset shall be reduced by the principal amount of indebtedness the interest on which is so capitalized, deferred, or disallowed.

(2) *Example.* The rules of this paragraph (f) may be illustrated by the following example.

*Example.* X is a domestic corporation which uses the tax book value method of apportionment. X has \$1000 of indebtedness and \$100 of interest expense. X constructs an asset with an adjusted basis of \$800 before interest capitalization and is required under the rules of section 263A to capitalize \$80 in interest expense. Because interest on \$800 of debt is capitalized and because the production period is in progress at the end of X's taxable year, \$800 of the principal amount of X's debt is allocable to the building. The \$800 of debt allocable to the building reduces its adjusted basis for purposes of apportioning the balance of X's interest expense (\$20).

(g) *Special rules for FSCs—(1) Treatment of FSC stock.* No interest expense shall be allocated or apportioned to stock of a foreign sales corporation ("FSC") to the extent that the FSC stock is attributable to the separate limitation for certain FSC distributions described in section 904(d)(1)(H). FSC stock is considered to be attributable solely to the separate limitation category described in section 904(d)(1)(H) unless the taxpayer can demonstrate that more than 20 percent of the FSC's gross income for the taxable year consists of income other than foreign trading income.

(2) *Treatment of assets that generate foreign trade income.* Assets of the related supplier that generate foreign trade income must be prorated between assets attributable to foreign source general limitation income and assets attributable to domestic source income in proportion to foreign source general limitation income and domestic source income derived from transactions generating foreign trade income.

(i) *Value of assets attributable to foreign source income.* The value of assets attributable to foreign source general limitation income is computed by multiplying the value of assets for the taxable year generating foreign trading gross receipts by a fraction:

(A) The numerator of which is foreign source general limitation income for the



taxable year derived from transactions giving rise to foreign trading gross receipts, after the application of the limitation provided in section 927(e)(1), and

(B) The denominator of which is total income for the taxable year derived from the transaction giving rise to foreign trading gross receipts.

(ii) *Value of assets attributable to domestic source income.* The value of assets attributable to domestic source income is computed by subtracting from the total value of assets for the taxable year generating foreign trading gross receipts the value of assets attributable to foreign source general limitation income as computed under paragraph (g)(2)(i) of this section.

(h) *Special rules for DISCs—(1) Treatment of DISC stock.* No interest shall be allocated or apportioned to stock in a DISC (or stock in a former DISC to the extent that the stock in the former DISC is attributable to the separate limitation category described in section 904(d)(1)(F)).

(2) *Treatment of assets that generate qualified export receipts.* Assets of the related supplier that generate qualified export receipts must be prorated between assets attributable to foreign source general limitation income and assets attributable to domestic source income in proportion to foreign source general limitation income and domestic source income derived from transactions during the taxable year from transactions generating qualified export receipts.

(i) [Reserved.]

(j) *Examples.* Certain of the rules in this section and §§ 1.861-9T(g) and 1.861-10(e) are illustrated by the following example.

**Example (1):**

(1) *Facts.* X, a domestic corporation organized on January 1, 1987, has a calendar taxable year and apportions its interest expense on the basis of the tax book value of its assets. In 1987, X incurred a deductible third-party interest expense of \$100,000 on an average month-end debt amount of \$1 million. The total tax book value of X's assets (adjusted as required under paragraph (b) of this section for retained earnings and profits) is \$2 million. X manufactures widgets. One-half of the widgets are sold in the United States and one-half are exported and sold through a foreign branch with title passing outside the United States.

X owns all the stock of Y, a controlled foreign corporation that also has a calendar taxable year and is also engaged in the manufacture and sale of widgets. Y has no earnings and profits or deficits in earnings and profits prior to 1987. For 1987, Y has taxable income and earnings and profits of \$50,000 before the deductible for related person interest expense. Half of the \$50,000 is foreign source personal holding company

income and the other half is derived from widget sales and constitutes foreign source general limitation income. Assume that Y has no deductibles from gross income other than interest expense. Y's foreign personal holding company taxable income is included in X's gross income under section 951. Y paid no dividends in 1987. Prior to 1987, Y did not borrow any funds from X. The average month-end level of borrowings by Y from X in 1987 is \$100,000, on which Y paid a total of \$10,000 in interest. The total tax book value of Y's assets in 1987 is \$500,000. Y has no liabilities to third parties. X elects pursuant to § 1.861-9T for Y to apportion Y's interest expense under the gross income method prescribed in § 1.861-9T(g).

In addition to its stock in Y, X owns 20 percent of the stock of Z, a noncontrolled section 902 corporation. X's total assets and their tax book values are:

Asset	Tax book value
Plant & equipment.....	\$1,000,000
Corporate headquarters.....	500,000
Inventory.....	200,000
Automobiles.....	20,000
Patents.....	50,000
Trademarks.....	10,000
Y stock (including paragraph (c)(2) adjustment).....	80,000
Y note.....	100,000
Z stock.....	40,000

**(2) Categorization of Assets.**

**Single Category Assets**

1. *Automobiles:* X's automobiles are used exclusively by its domestic sales force in the generation of United States source income. Thus, these assets are attributable solely to the grouping of domestic income.

2. *Y Note:* Under paragraph (d)(2) of this section, the Y note in the hands of X is characterized according to X's treatment of the interest income received on the Y note. In determining the source and character of the interest income on the Y note, the look-through rules of sections 904(d)(3)(C) and 904(g) apply. Under section 954(b)(5) and § 1.904-5(c)(2)(ii), Y's \$10,000 interest payment to X is allocated directly to, and thus reduces, Y's foreign personal holding company income of \$25,000 (yielding foreign personal holding company taxable income of \$15,000). Therefore, the Y note is attributable solely to the statutory grouping of foreign source passive income.

3. *Z stock:* Because Z is a noncontrolled section 902 corporation, the dividends paid by Z are subject to a separate limitation under section 904(d)(1)(E). Thus, this asset is attributable solely to the statutory grouping consisting of Z dividends.

**Multiple Category Assets**

1. *Plant & equipment, inventory, patents, and trademarks:* In 1987, X sold half its widgets in the United States and exported half outside the United States. A portion of the taxable income from export sales will be foreign source income, since the export sales were accomplished through a foreign branch and title passed outside the United States.

Thus, these assets are attributable both to the statutory grouping of foreign general limitation and the grouping of domestic income.

2. *Y Stock:* Since Y's interest expense is apportioned under the gross income method prescribed in § 1.861-9T(j), the Y stock must be characterized under the gross income method described in paragraph (c)(3)(iii) of this section.

**Assets without Directly Identifiable Yield**

1. *Corporate headquarters:* This asset generates no directly identifiable income yield. The value of the asset is disregarded.

**(3) Analysis of Income Yield for Multiple Category Assets.**

1. *Plant & Equipment, inventory, patents, and trademarks:* As noted above, X's 1987 widget sales were half domestic and half foreign. Assume that Example 2 of § 1.863-3(b)(2) applies in sourcing the export income from the export sales. Under Example 2, the income generated by the export sales is sourced half domestic and half foreign. The income generated by the domestic sales is entirely domestic source. Accordingly, three-quarters of the income generated on all sales is domestic source and one-quarter of the income is foreign source. Thus, three-quarters of the fair market value of these assets are attributed to the grouping of domestic source income and one-quarter of the fair market value of these assets is attributed to the statutory grouping of foreign source general limitation income.

2. *Y Stock:* Under the gross income method described in paragraph (c)(3)(iii) of this section, Y's gross income net of interest expenses in each limitation category must be determined—\$25,000 foreign source general limitation income and \$15,000 of foreign source passive income. Of X's adjusted basis of \$80,000 in Y stock, \$50,000 is attributable to foreign source general limitation income and \$30,000 is attributable to foreign source passive income.

(4) *Application of the Special Allocation Rule of § 1.861-10T(e).* Assume that the taxable year in question is 1990 and that the applicable percentage prescribed by § 1.861-10T(e)(1)(iv)(A) is 80 percent. Assume that X has elected to use the quadratic formula provided in § 1.861-10T(e)(1)(iv)(B).

*Step 1.* X's average month-end level of debt owing to unrelated persons is \$1 million. The tax book value of X's assets is \$2 million. Thus, X's debt-to-asset ratio computed under § 1.861-10T(e)(1)(i) is 1 to 2.

*Step 2.* The tax book value of Y's assets is \$500,000. Because Y has no debt to persons other than X, Y's debt-to-asset ratio computed under § 1.861-10T(e)(1)(ii) is \$0 to \$500,000.

*Step 3.* Y's average month-end liabilities to X, as computed under § 1.861-10T(e)(1)(iii) for 1987 are \$100,000.

*Step 4.* Adding the \$100,000 of Y's liabilities owed to X as computed under Step 3 to Y's third party liabilities (\$0) would be insufficient to make Y's debt-to-asset ratio computed in Step 2 (\$100,000-to-\$500,000, or 1:5) equal to at least 80 percent of X's debt-to-asset ratio computed under Step 1, as adjusted to reflect a reduction in X's debt and assets by the \$100,000 of excess related



person indebtedness (.80 x \$900,000/\$1,900,000 or 1:2.6). Therefore, the entire amount of Y's liabilities to X (\$100,000) constitute excess related person indebtedness under § 1.861-10T(e)(1)(ii). Thus, the entire \$10,000 of interest received by X from Y during 1987 constitutes interest received on excess related person indebtedness.

**Step 5.** The Y note held by X has a tax book value of \$100,000. Solely for purposes of § 1.861-10T(e)(1)(v), the Y note is attributed to separate limitation categories in the same manner as the Y stock. Under paragraph (c)(3)(iii) of this section, of the \$80,000 of Y stock held by X, \$50,000 is attributable to foreign source general limitation income, and \$30,000 is attributable to foreign source

passive income. Thus, for purposes of § 1.861-10T(e)(1)(v), \$62,500 of the \$100,000 Y note is considered to be a foreign source general limitation asset and \$37,500 of the \$100,000 Y note is considered to be a foreign source passive asset.

**Step 6.** Since \$8,000 of the \$10,000 in related person interest income received by Y constitutes interest received on excessive related person indebtedness, \$10,000 of X's third party interest expense is allocated to X's debt investment in Y. Under § 1.861-10T(e)(1)(vi), 62.5 percent of the \$10,000 of X's third party interest expense (\$6,250) is allocated to foreign source general limitation income and 37.5 percent of the \$10,000 of X's third party interest expense (\$3,750) is allocated to foreign source passive income.

As a result of this direct allocation, the value of X's assets generating foreign source general limitation income shall be reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source general limitation income (\$62,500), and X's assets generating foreign general limitation income shall be reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign passive income (\$37,500).

**(5) Totals.**

Having allocated \$10,000 of its third party interest expense to its debt investment in Y, X would apportion the \$90,000 balance of its interest according to the following apportionment fractions:

Asset	Domestic source	Foreign general	Foreign passive	Noncontrolled section 902
Plant and equipment	\$750,000	\$250,000		
Inventory	\$150,000	\$50,000		
Automobiles	\$20,000			
Patents	\$37,500	\$12,500		
Trademarks	\$7,500	\$2,500		
Y stock		\$50,000	\$30,000	
Y note			\$100,000	
Z stock				\$40,000
<b>Totals</b>	<b>\$965,000</b>	<b>\$365,000</b>	<b>\$130,000</b>	<b>\$40,000</b>
Adjustments for directly allocable interest		(\$62,250)	(\$37,750)	
<b>Adjusted totals</b>	<b>\$965,000</b>	<b>\$302,750</b>	<b>\$92,250</b>	<b>\$40,000</b>
<b>Percentage</b>	<b>69</b>	<b>22</b>	<b>6</b>	<b>3</b>

**Example 2:** Assume the same facts as in Example 1, except that Y has \$100,000 of third party indebtedness. Further, assume for purposes of the application of the special allocation rule of § 1.861-10T(e) that the taxable year is 1990 and that the applicable percentage prescribed by § 1.861-10T(e)(1)(iv)(A) is 80 percent. The application of the § 1.861-10T(e) would be modified as follows.

**Step 1.** X's debt-to-asset ratio computed under § 1.861-10T(e)(1)(i) remains 1 to 2 (or 0.5).

**Step 2.** The tax book value of Y's assets is \$500,000. Y has \$100,000 of indebtedness to third parties. Y's debt-to-asset ratio computed under § 1.861-10T(e)(1)(ii) is \$100,000 to \$500,000 (1:5 or 0.2).

**Step 3.** Y's average month-end liabilities to X, as computed under § 1.861-10T(e)(1)(iii) remain \$100,000.

**Step 4.** X's debt-to-asset ratio is 0.5 and 80 percent of 0.5 is 0.4. Because Y's debt-to-asset ratio is 0.2, there is excess related person indebtedness, the amount of which can be computed based on the following formula:

Aggregate third party debt of related U.S. shareholder - X

U.S. shareholder assets - X

× Applicable percentage for year (0.8) =

Aggregate third party debt of related CFCs + X

Related CFC assets

Supplying the facts as given, this equation is as follows:

$$\frac{1,000,000 - X}{2,000,000 - X} \times .8 = \frac{100,000 + X}{500,000}$$

Multiply both sides by 500,000 and (2,000,000 - X), yielding:



$$4 \times 10^{11} - 400,000X = 2 \times 10^{11} + 2,000,000X - 100,000X - X^2$$

Since there is an  $X^2$  in this equation, a quadratic formula must be utilized to solve for  $X$ . Group the components in this equation, segregating the  $X$  and the  $X^2$ .

$$X^2 + (-2,300,000)X + (2 \times 10^{11}) = 0$$

Apply the quadratic formula:

$$X = \frac{-b \pm \sqrt{b^2 - 4(a)(c)}}{2(a)}$$

$a=1$  (coefficient of  $X^2$ )

$b=-2,300,000$  (coefficient of  $X$ )

$c=2 \times 10^{11}$  (remaining element of equation)

Therefore,  $X$  equals either 90,519 or  $(2.21 \times 10^{11})$ , for purposes of computing excess related person indebtedness,  $X$  is the lowest positive amount derived from this equation, which is 90,519.

Steps 5 and 6 are unchanged from *Example 1*, except that the total amount of interest on excess related party indebtedness is \$9,051.

**§ 1.861-13T Transition rules for interest expenses (Temporary regulations.)**  
[Reserved]

**§ 1.861-14T Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations (Temporary regulations.)**

(a) *In general.* Section 1.861-11T provides special rules for allocating and apportioning interest expense of an affiliated group of corporations. The rules of this § 1.861-14T also relate to affiliated groups of corporations and implement section 864(e)(6), which requires affiliated group allocation and apportionment of expenses other than interest which are not directly allocable and apportionable to any specific income producing activity or property. In general, the rules of this section apply to taxable years beginning after December 31, 1986. Paragraph (b) of this section describes the scope of the application of the rule for the allocation and apportionment of such expenses of affiliated groups of corporations. Such rules are then set forth in paragraph (c) of this section. Paragraph (d) of this section contains the definition of the term "affiliated group" for purposes of this section. Paragraph (e) of this section describes the expenses subject to allocation and apportionment under the rules of this section. Paragraph (f) of this section provides rules concerning the affiliated group allocation and apportionment of such expenses in

computing the combined taxable income of a FSC or DISC and its related supplier. Paragraph (g) of this section describes the treatment of losses caused by apportionment of such expenses in the case of an affiliated group that does not file a consolidated return. Paragraph (h) of this section provides rules concerning the treatment of the reserve expenses of a life insurance company. Paragraph (j) of this section provides examples illustrating the application of this section.

(b) *Scope—(1) Application of section 864(e)(6).* Section 864(e)(6) and this section apply to the computation of taxable income for purposes of computing separate limitations on the foreign tax credit under section 904. Section 864(e)(6) and this section also apply in connection with section 907 to determine reductions in the amount allowed as a foreign tax credit under section 901. Section 864(e)(6) and this section also apply to the computation of the combined taxable income of the related supplier and a foreign sales corporation (FSC) (under sections 921 through 927) as well as the combined taxable income of the related supplier and a domestic international sales corporation (DISC) (under sections 991 through 997).

(2) *Nonapplication of section 864(e)(6).* Section 864(e)(6) and this section do not apply to the computation of Subpart F income of controlled foreign corporations (under sections 951 through 964) or the computation of effectively connected taxable income of foreign corporations.

(3) *Application of section 864(e)(6) to the computation of combined taxable income of a possessions corporation and its affiliates.* [Reserved.]

(c) *General rule for affiliated corporations—(1) General rule.* (i) Except as otherwise provided in paragraph (c)(2) of this section, the taxable income of each member of an affiliated group within each statutory grouping shall be determined by allocating and apportioning the expenses described in paragraph (e) of this section of each member according to apportionment fractions which are computed as if all members of such group were a single corporation. For purposes of determining these apportionment fractions, any interaffiliate transactions or property that are duplicative with respect to the measure of apportionment chosen shall be eliminated. For example, in the application of an asset method of apportionment, stock in affiliated corporations shall not be taken into

account, and loans between members of an affiliated group shall be treated in accordance with the rules of § 1.861-11T(e). Similarly, in the application of a gross income method of apportionment, interaffiliate dividends and interest, gross income from sales or services, and other interaffiliate gross income shall be eliminated. Likewise, in the application of a method of apportionment based on units sold or sales receipts, interaffiliate sales shall be eliminated.

(ii) Except as otherwise provided in this section, the rules of § 1.861-8T apply to the allocation and apportionment of the expenses described in paragraph (e) of this section. Thus, allocation under this paragraph (c) is accomplished by determining, with respect to each expense described in paragraph (e), the class of gross income to which the expense is definitely related and then allocating the deduction to such class of gross income. For this purpose, the gross income of all members of the affiliated group must be taken in account. Then, the expense is apportioned by attributing the expense to gross income (within the class to which the expense has been allocated) which is in the statutory grouping and to gross income (within the class) which is in the residual grouping. Section 1.861-8T(c)(1) identifies a number of factors upon which apportionment may be based, such as comparison of units sold, gross sales or receipts, assets used, or gross income. The apportionment method chosen must be applied consistently by each member of the affiliated group in apportioning the expense when more than one member incurred the expense or when members incurred separate portions of the expense. The apportionment fraction must take into account the apportionment factors contributed by all members of the affiliated group. In the case of an affiliated group of corporations that files a consolidated return, consolidated foreign tax credit limitations are computed for the group in accordance with the rules of § 1.1502-4. For purposes of this section the term "taxpayer" refers to the affiliated group (regardless of whether the group files a consolidated return), rather than to the separate members thereof.

(2) *Expenses relating to fewer than all members.* An expense relates to fewer than all members of an affiliated group if the expense is allocable under paragraph (e)(1) of this section to gross income of at least one member other than the member that incurred the



expense but fewer than all members of the affiliated group. The taxable income of the member that incurred the expense shall be determined by apportioning that expense under the rules of paragraph (c)(1) of this section as if the members of the affiliated group that derive gross income to which such expense is allocable under paragraph (e)(1) were treated as a single corporation.

(3) *Prior application of section 482.* The rules of this section do not supersede the application of section 482 and the regulations thereunder. Section 482 may be applied effectively to deny a deduction for an expense to one member of an affiliated group and to allow a deduction for that expense to another member of the affiliated group. In cases to which section 482 is applied, expenses shall be reallocated and reapportioned under section 864(e)(6) and this section after taking into account the application of section 482.

(d) *Definition of affiliated group—(1) General rule.* For purposes of this section, the term "affiliated group" has the same meaning as is given that term by section 1504, except that section 936 companies are also included within the affiliated group. Section 1504(a) defines an affiliated group as one or more chains of includible corporations connected through 80% stock ownership with a common parent corporation which is an includible corporation (as defined in section 1504(b)). In the case of a corporation that either becomes or ceases to be a member of the group during the course of the corporation's taxable year, only the expenses incurred by the group member during the period of membership shall be allocated and apportioned as if all members of the group were a single corporation. In this regard, the apportionment factor chosen shall relate only to the period of membership. For example, if apportionment on the basis of assets is chosen, the average amount of assets (tax book value or fair market value) for the taxable year shall be multiplied by a fraction, the numerator of which is the number of months of the corporation's taxable year during which the corporation was a member of the affiliated group, and the denominator of which is the number of months within the corporation's taxable year. If apportionment on the basis of gross income is chosen, account shall be taken of gross income generated only during the period of membership. If apportionment on the basis of units sold or sales receipts is chosen, account shall be taken of units sold or sales receipts only during the period of membership. Expenses incurred by the group member

during its taxable year, but not during the period of membership, shall be allocated and apportioned without regard to other members of the group.

(2) *Inclusion of section 936 corporations.* The exclusion from the affiliated group of section 936 corporations under section 1504(b)(4) does not apply for purposes of this section. Thus, a possessions corporation meeting the ownership requirements of section 1504(a) with respect to which an election under section 936 is in effect for the taxable year is a member of the affiliated group.

(3) *Inclusion of financial corporations.* For purposes of this section, in the case of an affiliated group (as defined in paragraph (d)(1) of this section), any members that constitute financial corporations as defined in § 1.861-11T(d)(4)(ii) shall be treated as members of the affiliated group. The rule of § 1.861-11T(d)(4)(i), which treats such financial corporations as a separate affiliated group, applies only for purposes of allocation and apportionment of interest expense and does not apply to the allocation and apportionment of other expenses under this section.

(4) *Treatment of life insurance companies subject to taxation under section 801.* A life insurance company that is subject to taxation under section 801 shall be considered to constitute a member of the affiliated group composed of companies not taxable under section 801 only if a parent corporation so elects under section 1504(c)(2)(A) of the Code.

(e) *Expenses to be allocated and apportioned under this section—(1) Expenses not directly traceable to specific income producing activities or property.* (i) The expenses that are required to be allocated and apportioned under the rules of this section are expenses related to certain supportive functions, research and experimental expenses, stewardship expenses, and legal and accounting expenses, to the extent that such expenses are not directly allocable to specific income producing activities or property solely of the member of the affiliated group that incurred the expense. Interest expense of members of an affiliated group of corporations is allocated and apportioned under § 1.861-11T and not under the rules of this section. Expenses that are included in inventory costs or that are capitalized are not subject to allocation and apportionment under the rules of this section.

(ii) An item of expense is not considered to be directly allocable to

specific income producing activities or property solely of the member incurring the expense if, were all members of the affiliated group treated as a single corporation, the expense would not be considered definitely related, within the meaning of § 1.861-8T(b)(2), only to a class of gross income derived solely by the member which actually incurred the expense. Furthermore, the expense is presumed not to be definitely related only to a class of gross income derived solely by the member incurring the expense (and is, therefore, presumed not to be directly allocable to specific income producing activities or property of that member) unless the taxpayer is able affirmatively to establish otherwise. As provided in paragraph (c)(1) of this section, expenses described in this paragraph (e)(1) generally shall be apportioned by the member incurring the expense according to apportionment fractions computed as if all members of the affiliated group were a single corporation. Under paragraph (c)(2) of this section, however, an expense shall be apportioned according to apportionment fractions computed as if only some (but fewer than all) members of the affiliated group were a single corporation, if the expense is considered allocable to gross income of at least one member other than the member incurring the expense but fewer than all members of the affiliated group. An item of expense shall be considered to be allocable to gross income of fewer than all members of the group if, were all members of the affiliated group treated as a single corporation, the expense would not be considered definitely related within the meaning of § 1.861-8T(b)(2) to gross income derived by all members of the group. In such case, the expense shall be considered allocable, for purposes of paragraph (c)(2) of this section, to gross income of those members of the group that generated (or could reasonably be expected to generate) the gross income to which the expense would be considered definitely related if the group were treated as a single corporation.

(2) *Research and experimental expenses—*

(i) *In general.* The allocation and apportionment of research and experimental expenses is governed by the rules of § 1.861-8T(e)(3). In the case of research and experimental expenses incurred by a member of an affiliated group, the rules of § 1.861-8T(e)(3) shall be applied as if all members of the affiliated group were a single taxpayer. Thus, research and experimental expenses shall be allocated to all income of all members of the affiliated



group reasonably connected with the relevant broad product category to which such expenses are definitely related under § 1.861-8T(e)(3)(i). If fewer than all members of the affiliated group derive gross income reasonably connected with that relevant broad product category, then such expenses shall be apportioned under the rules of this paragraph (c)(2) only among those members, as if those members were a single corporation. See *Example (1)* of paragraph (j) of this section. Such expenses shall then be apportioned, if the sales method is used, in accordance with the rules of § 1.861-8T(e)(3)(ii) between the statutory grouping (within the class of gross income) and the residual grouping (within the class of gross income) taking into account the amount of sales of all members of the affiliated group from the product category which resulted in such gross income. Section 1.861-8T(e)(3)(ii)(D), relating to sales of controlled parties, shall be applied as if all members of the affiliated group were the "taxpayer" referred to therein. If either of the optional gross income methods of apportionment is used, gross income of all members of the affiliated group that generate, have generated, or could reasonably have been expected to generate gross income within the relevant class of gross income must be taken into account.

(ii) *Expenses subject to the statutory moratorium.* The rules of this section do not apply to research and experimental expenses allocated under section 126 of Pub. L. 98-368.

(3) *Expenses related to supportive functions.* Expenses which are supportive in nature (such as overhead, general and administrative, supervisory expenses, advertising, marketing, and other sales expenses) are to be allocated and apportioned in accordance with the rules of § 1.861-8T(b)(3). To the extent that such expenses are not directly allocable under paragraph (e)(1)(ii) of this section to specific income producing activities or property of the member of the affiliated group that incurred the expense, such expenses must be allocated and apportioned as if all members of the affiliated group were a single corporation in accordance with the rules of paragraph (c) of this section. Specifically, such expenses must be allocated to a class of gross income that take into account gross income that is generated, has been generated, or could reasonably have been expected to have been generated by the members of the affiliated group. If the expenses relate to the gross income of fewer than all members of the affiliated group as

determined under paragraph (c)(2) of this section, then those expenses must be apportioned under the rules of paragraph (c)(2) of this section, as if those fewer members were a single corporation. See *Example (3)* of paragraph (j) of this section. Such expenses must be apportioned between statutory and residual groupings of income within the appropriate class of gross income by reference to the apportionment factors contributed by the members of the affiliated group that are treated as a single corporation.

(4) *Stewardship expenses.* Stewardship expenses are to be allocated and apportioned in accordance with the rules of § 1.861-8T(e)(4). In general, stewardship expenses are considered definitely related and allocable to dividends received or to be received from a related corporation. If members of the affiliated group, other than the member that incurred the stewardship expense, receive or may receive dividends from the related corporation, such expense must be allocated and apportioned in accordance with the rules of paragraph (c) of this section as if all such members of the affiliated group that receive or may receive dividends were a single corporation. See *Example (4)* of paragraph (j) of this section. Such expenses must be apportioned between statutory and residual groupings of income within the appropriate class of gross income by reference to the apportionment factors contributed by the members of the affiliated group treated as a single corporation.

(5) *Legal and accounting fees and expenses.* Legal and accounting fees and expenses are to be allocated and apportioned under the rules of § 1.861-8T(e)(5). To the extent that such expenses are not directly allocable under paragraph (e)(1)(ii) of this section to specific income producing activities or property of the member of the affiliated group that incurred the expense, such expenses must be allocated and apportioned as if all members of the affiliated group were a single corporation. Specifically, such expenses must be allocated to a class of gross income that takes into account the gross income which is generated, has been generated, or could reasonably have been expected to have been generated by the other members of the affiliated group. If the expenses relate to the gross income of fewer than all members of the affiliated group as determined under paragraph (c)(2) of this section, then those expenses must be apportioned under the rules of paragraph (c)(2) of this section, as if

those fewer members were a single corporation. See *Example (5)* of paragraph (j) of this section. Such expenses must be apportioned taking into account the apportionment factors contributed by the members of the group that are treated as a single corporation.

(f) *Computation of FSC or DISC combined taxable income.* In the computation under the pricing rules of sections 925 and 994 of the combined taxable income of any FSC or DISC and its related supplier which are members of an affiliated group, the combined taxable income of such FSC or DISC and its related supplier shall be reduced by the portion of the expenses of the affiliated group described in paragraph (e) of this section that is incurred in connection with export sales involving that FSC or DISC. In order to determine the portion of the expenses of the affiliated group that is incurred in connection with export sales by or through a FSC or DISC, the portion of the total of the apportionment factor chosen that relates to the generation of that export income must be determined. Thus, if gross income is the apportionment factor chosen, the portion of total gross income of the affiliated group that consists of combined gross income derived from transactions involving the FSC or DISC and related supplier must be determined. Similarly, if units sold or sales receipts is the apportionment factor chosen, the portion of total units sold or sales receipts that generated export income of the FSC or DISC and related supplier must be determined. The amount of the expense shall then be multiplied by a fraction, the numerator of which is the export related apportionment factor as determined above, and the denominator of which is the total apportionment factor. Thus, if gross income is the apportionment factor chosen, apportionment is based on a fraction, the numerator of which is export related combined gross income of the FSC or DISC and related supplier and the denominator of which is the total gross income of the affiliated group. Similarly, if units sold or sales receipts is the apportionment factor chosen, the fraction is the units sold or sales receipts that generated export income of the FSC or DISC and related supplier over the total units sold or sales receipts of the affiliated group. Under this rule, expenses of other group members may be attributed to the combined gross income of a FSC or DISC and its related supplier without affecting the amount of expenses (other than any commission payable by the related supplier to the FSC or DISC)



otherwise deductible by the FSC or DISC, the related supplier, or other members of the affiliated group. The FSC or DISC must calculate combined taxable income, taking into account any reduction by expenses attributed from other members of the affiliated group to determine the commission derived by the FSC or DISC or the transfer price of qualifying export property sold to the FSC or DISC.

(g) *Losses created through apportionment.* In the case of an affiliated group that does not file a consolidated return, the taxable income in any separate limitation category must be adjusted under this paragraph (g) for purposes of computing the separate foreign tax credit limitations under section 904(d). As a consequence of the affiliated group allocation and apportionment of expenses required by section 864(e)(6) and this section, expenses of a group member may be apportioned for section 904 purposes to a limitation category with a consequent loss in that limitation category. For purposes of this paragraph, the term "limitation category" includes domestic source income, as well as the types of income described in section 904(d)(1) (A) through (I). A loss of one affiliate in a limitation category will reduce the income of another member in the same limitation category if a consolidated return is filed. (See § 1.1502-4.) If a consolidated return is not filed, this

netting does not occur. Accordingly, in such a case, the following adjustments among members are required, in order to give effect to the group allocation of expense:

(1) Losses created through group apportionment of expense in one or more limitation categories within a given member must be eliminated; and

(2) A corresponding amount of income of other members in the same limitation category must be recharacterized. Such adjustments shall be accomplished in accordance with the rules of § 1.861-11T(g).

(h) *Special rule for the allocation of reserve expenses of a life insurance company.* An amount of reserve expenses of a life insurance company equal to the dividends received deduction that is disallowed because it is attributable to the policyholders' share of dividends received shall be treated as definitely related to such dividends. The remaining reserve expenses of such company shall be allocated and apportioned under the rules of § 1.861-8 and this section.

(i) [Reserved.]

(j) *Examples.* The rules of this section may be illustrated by the following examples. All of these examples assume that section 482 has not been applied by the Commissioner.

*Example (1)—(i) Facts.* P owns all of the stock of X and all of the stock of Y. P, X and Y are domestic corporations. P is a holding

company for the stock of X and Y. Both X and Y manufacture and sell a product which is included in a broad product category listed in § 1.861-8(e)(3)(i). During 1988, X incurred \$100,000 on research connected with that product. All of the research was performed in the United States. In 1988, the domestic sales by X of the product totalled \$400,000 and the foreign sales of the product totalled \$200,000; Y's domestic sales of the product totalled \$200,000 and Y's foreign sales of the product totalled \$200,000. In 1988, X's gross income is \$300,000, of which \$200,000 is from domestic sales and \$100,000 is from foreign sales; Y's gross income is \$200,000 of which \$100,000 is from domestic sales and \$100,000 is from foreign sales.

(ii) P, X and Y are affiliated corporations within the meaning of section 864(e)(5) and this section. There search expenses incurred by X are allocable to all income connected with the relevant broad category listed in § 1.861-8T(e)(3)(i). Both X and Y have gross income includible within the class of gross income related to that product category. Accordingly, the research and experimental expenses incurred by X are to be allocated and apportioned as if X and Y were a single corporation. The apportionment for 1988 is as follows:

*Tentative Apportionment on the Basis of Sales*

Research expenses to be apportioned .....	\$100,000
Exclusive apportionment to United States source gross income .....	\$30,000
Research expense to be apportioned on the basis of sales .....	\$70,000
Apportionment of research expense to foreign source general limitation income:	

$$\$70,000 \times \frac{\$200,000 + \$200,000}{\$600,000 + \$400,000} = \$28,000$$

Apportionment of research expense to United States source gross income:

$$\$70,000 \times \frac{\$400,000 + \$200,000}{\$600,000 + \$400,000} = \$42,000$$

Total apportioned deduction for research.....\$100,000  
Of which—  
Apportioned to foreign source gross

income.....\$28,000  
Apportioned to U.S. source gross income (\$30,000 + \$42,000).....\$72,000

*Tentative Apportionment on the Basis of Gross Income*

Research expense apportioned to foreign source gross income:

$$\$100,000 \times \frac{\$100,000 + \$100,000}{\$300,000 + \$200,000} = \$40,000$$



Research expense apportioned to United States income:

$$\$100,000 \times \frac{\$200,000 + \$100,000}{\$300,000 + \$200,000} = \$60,000$$

*Example (2)—(i) Facts.* P owns all of the stock of X, which owns all of the stock of Y. P, X and Y are all domestic corporations. P has incurred general training program expenses of \$100,000 in 1987. Employees of P, X and Y participate in the training program. In 1987, P had United States source gross income of \$200,000 and foreign source general limitation income of \$200,000; X had U.S. source gross income of \$100,000 and foreign

source general limitation income of \$100,000; and Y had U.S. source gross income of \$300,000 and foreign source general limitation income of \$100,000.

(ii) *Analysis.* P, X and Y are an affiliated group of corporations within the meaning of section 864(e)(5). The training expenses incurred by P are not definitely related solely to specific income producing activities or property of P. The employees of X and Y also

participate in the training program. Thus, this expense relates to gross income generated by P, X and Y. This expense is definitely related and allocable to all of the gross income from foreign and domestic sources of P, X and Y. It is assumed that apportionment on the basis of gross income is reasonable. The apportionment of the expense is as follows: Apportionment of \$100,000 expense to foreign source general limitation income:

$$\$100,000 \times \frac{\$200,000 + \$100,000 + \$100,000}{\$400,000 + \$200,000 + \$400,000} = \$40,000$$

Apportionment of \$100,000 expense to United States source gross income:

$$\$100,000 \times \frac{\$200,000 + \$100,000 + \$300,000}{\$400,000 + \$200,000 + \$400,000} = \$60,000$$

Total apportioned expense..... \$100,000

*Example (3)—(i) Facts.* The facts are the same as in *Example (2)* above, except that only employees of P and X participate in the training program.

(ii) *Analysis.* Because only the employees of P and X participate in the training program and they perform no services for Y, the expense relates only to gross income generated by P and X. Accordingly, the \$100,000 expense must be allocated and

apportioned as if P and X were a single corporation. The apportionment of the \$100,000 expense is as follows:

Apportionment of \$100,000 expense to foreign source general limitation income:

$$\$100,000 \times \frac{\$200,000 + \$100,000}{\$400,000 + \$200,000} = \$50,000$$

Apportionment of \$100,000 expense to U.S. source gross income:

$$\$100,000 \times \frac{\$200,000 + \$100,000}{\$400,000 + \$200,000} = \$50,000$$

*Example (4)—(i) Facts.* P owns all of the stock of X which owns all of the stock of Y. P and X are domestic corporations; Y is a foreign corporation. In 1987 P incurred \$10,000 of stewardship expenses relating to an audit of Y.

(ii) *Analysis.* The stewardship expenses incurred by P are not directly allocable to specific income producing activities or property of P. The expense is definitely

related and allocable to dividends received or to be received by X. Accordingly, the expense of P is allocated and apportioned as if P and X were a single corporation. The expense is definitely related to dividends received or to be received by X from Y, a foreign corporation. Such dividends are foreign source general limitation income. Thus, the entire amount of the expense must

be allocated to foreign source dividend income.

*Example (5)—(i) Facts.* P owns all of the stock of X which owns all of the stock of Y. P, X and Y are all domestic corporations. In 1987, P incurred \$10,000 legal expense relating to the testimony of certain employees of P in connection with litigation to which Y is a party. This expense is not allocable to specific income of Y. In 1987, Y had \$100,000



foreign source general limitation income and \$300,000 U.S. source gross income.

(ii) *Analysis.* The legal expenses incurred by P are not definitely related solely to specific income producing activities or property of P. The expense is definitely related and allocable to the class of gross income which includes only gross income generated by Y. Accordingly, the expense of P is allocated and apportioned as if Y were the only member of the affiliated group, as follows:

Apportionment of legal expenses to foreign source general limitation income:

$$\begin{array}{r} \$10,000 \times \frac{\$100,000}{\$400,000} = \$2,500 \end{array}$$

Apportionment of legal expenses to U.S. source gross income:

$$\begin{array}{r} \$10,000 \times \frac{\$300,000}{\$400,000} = \$7,500 \end{array}$$

*Example (6)—(i) Facts.* P owns all of the stock of R, which owns all of the stock of F. P and R are domestic corporations, and F is a foreign sales corporation under section 922 of the Code. R and F have entered into an agreement whereby F is paid a commission with respect to sales of product A. In 1987, P had gross receipts of \$1,000,000 from domestic sales of product A, and gross receipts of \$1,000,000 from foreign sales of product A. R had gross receipts of \$1,000,000 from domestic sales of product A, and \$1,000,000 from export sales of product A. R's cost of goods sold attributable to export sales is \$500,000. R has deductible expenses of \$100,000 directly related to its export sales, and F has such deductible expenses of \$100,000. During 1987, P incurred an expense of \$100,000 for marketing studies involving the worldwide market for product A.

(ii) *Analysis.* P and R are an affiliated group of corporations within the meaning of section 864(e)(5) and this section. The expense incurred by P for marketing studies regarding the worldwide market for product A is an expense that is not directly related solely to the activities of P, but also to the activities of R. This expense must be allocated and apportioned under the rules of paragraph (c)(1) of this section, as if P and R were a single corporation. The expense is allocable to the class of gross income that includes all gross income generated by sales of product A. Apportionment on the basis of gross receipts is reasonable under these facts. F, a foreign corporation, is not a member of the affiliated group. However, for purposes of determining F's commission on its sales, the combined gross income of F and R must be reduced by the portion of the marketing studies expense of P that is incurred in

connection with export sales involving F under the rules of paragraph (f) of this section. The computation of the combined taxable income of R and F is as follows:

Combined Taxable Income of R and F	
R's gross receipts from export sales .....	\$1,000,000
R's cost of goods sold .....	\$500,000
Combined Gross Income .....	\$500,000
Less:	
R's other deductible expenses ..	\$100,000
F's other deductible expenses...	100,000
Apportionment of P's expense:	
	\$1,000,000
\$100,000 x $\frac{\$1,000,000}{\$200,000 + \$2,000,000}$ ..	\$25,000
Total .....	\$225,000
Combined Taxable Income .....	\$275,000

Par. 6. Section 1.863-3 is amended by revising paragraph (b)(2) *Example (2)*, subdivisions (i) and (ii) to read as follows:

**§ 1.863-3 Income from the sale of personal property derived partly from within and partly from without the United States.**

(b) *Income party from sources within a foreign country.*

(2) *Allocation or apportionment.*

*Example (2).* (i) and (ii) [Reserved] For guidance, see § 863-3T(b)(2) *Example (2)*(i) and (ii).

Par. 7. A new § 1.863-3T is added immediately after § 1.863-3 to read as follows:

**§ 1.863-3T Income from the sale of personal property derived partly from within and partly from without the United States (Temporary regulations).**

(a) [Reserved]  
(b) *Income partly from sources within a foreign country.*

(1) [Reserved]  
(2) *Allocation or apportionment.*

*Example (1)* [Reserved]  
*Example (2).* (i) Where an independent factory or production price has not been established as provided under *Example (1)*, the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the

taxpayer within a foreign country and sold within the United States shall be computed.

(ii) Of this gross amount, one-half shall be apportioned in accordance with the value of the taxpayer's property within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction, the numerator of which consists of the value of the taxpayer's property within the United States and the denominator of which consists of the value of the taxpayer's property both within the United States and within the foreign country. The remaining one-half of such gross income shall be apportioned in accordance with the gross sales of the taxpayer within the United States and within the foreign country, the portion attributable to sources within the United States being determined by multiplying such one-half by a fraction the numerator of which consists of the taxpayer's gross sales for the taxable year or period within the United States, and the denominator of which consists of the taxpayer's gross sales for the taxable year or period both within the United States and within the foreign country. Deductions from gross income that are allocable and apportionable to gross income described in paragraph (i) of this *Example 2* shall be apportioned between the United States and foreign source portions of such income, as determined under this paragraph (ii), on a pro rata basis, without regard to whether the deduction relates primarily or exclusively to the production of property or to the sale of property.

(b)(2) *Example (2)*(iii) through (c)(4) [Reserved]

**Subchapter G—[Amended]**

**Regulations Under Tax Conventions**

Par. 8. The following regulations under tax conventions are hereby removed.

1. Part 501—Australia
2. Part 504—Belgium
3. Part 505—Netherlands
4. Part 506—Japan
5. Part 507—United Kingdom
6. Part 511—Finland
7. Part 512—Italy
8. Part 518—New Zealand
9. Part 519—Canada

**OMB Control Numbers the Paperwork Reduction Act**

**PART 602—[AMENDED]**

Par. 9. The authority citation for Part 602 continues to read as follows:  
Authority: 26 U.S.C. 7805.



**§ 602.101 [Amended]**

Par. 10. Section 602.101(c) is amended by inserting in the appropriate place in the table:

§ 1.861-9T.....1545-1072.  
§ 1.861-12T.....1545-1072.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 24, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-20838 Filed 9-9-88; 8:45 am]

BILLING CODE 4830-01-M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1190

#### Minimum Guidelines and Requirements for Accessible Design

**AGENCY:** United States Architectural and Transportation Barriers Compliance Board (ATBCB).

**ACTION:** Final Rule.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (ATBCB) hereby amends the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD) to provide minimum guidelines and requirements for accessible leased facilities. MGRAD is issued by the ATBCB pursuant to section 502(b)(7) of the Rehabilitation Act of 1973, to establish minimum guidelines and requirements for standards issued by the four standard-setting agencies under the Architectural Barriers Act of 1968.

**EFFECTIVE DATE:** September 14, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Mark W. Smith, ATBCB, 1111 18th Street, NW., Suite 500, Washington, DC 20036, (202) 653-7834 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address for persons with visual impairments.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by section 502 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112, 29 U.S.C. 792) to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90-480, 42 U.S.C. 4151 et seq.) (the Act). The Act is intended to insure that certain buildings, including leased buildings, financed with Federal funds are designed, constructed, and altered in accordance with standards issued by

four Federal agencies to provide ready access and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction and alteration subject to the Act are the Department of Defense for its buildings and facilities; the Department of Housing and Urban Development for residential structures; the U.S. Postal Service for its buildings and facilities; and the General Services Administration for all other buildings and facilities.

A 1978 amendment to Section 502 of the Rehabilitation Act, Pub. L. 95-602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and is codified at 36 CFR Part 1190.

#### B. Rulemaking History

One MGRAD section, 36 CFR 1190.34, was originally intended to contain requirements for standards for leased buildings. It was reserved, however, in recognition of the fact that litigation was pending concerning whether the Act requires that buildings be made accessible at the time of leasing, or only as they are otherwise altered. That litigation was resolved by a court decision holding that the Architectural Barriers Act (the Act) requires that buildings be made accessible at the time of leasing. *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985). In early 1986, a decision was made not to seek *certiorari* in the United States Supreme Court. One standard-issuing authority has issued interim standards intended to carry out the court's mandate. 51 FR 13122 (April 17, 1986).

The ATBCB's staff was directed by the Board Chairperson at the Board's meeting on March 13, 1986, to begin development of MGRAD provisions for § 1190.34 and to work with the four standard-setting agencies in that effort. The resulting working group also included representatives of the Department of Justice, whose member of the Board was then chairperson of the Board's Standards Committee. The Standards Committee approved the resulting proposal at its meeting on November 18, 1986. The Board approved the proposal on November 19, 1986 and it was published on February 11, 1987 (52 FR 4352).

The February 11, 1987 notice of proposed rulemaking also proposed provisions that would have completed another reserved section of MGRAD, § 1190.190, regarding detectable warning surfaces that may be used as warnings for visually impaired persons. On

September 16, 1987 (52 FR 34955) the ATBCB issued a notice of proposed rulemaking to incorporate a number of technical provisions of the Uniform Federal Accessibility Standards (UFAS) and current American National Standards Institute standard on accessibility (A117.1 (1986)) into MGRAD. As stated in the September notice of proposed rulemaking, comments received to date on the detectable warning surfaces issue will be considered together with any future comments on the subject that might be received in response to that notice. The ATBCB intends to make some decision on detectable warning surfaces at the conclusion of the rulemaking proceeding initiated with the September notice. MGRAD §§ 1190.70(e)(9) and 1190.80(f) will remain reserved until that time.

Seven comments addressed the February 11, 1987 proposed provisions for leased facilities. Three of the seven merely expressed general support for the proposal. Those comments which addressed the proposed rule with more specificity, and the Board's responses to those comments, are described in the following section-by-section discussion of the final rule. In addition to the changes mentioned therein, minor typographical and stylistic changes have been incorporated into the final rule.

#### C. Overview of the Final Rule

The final rule establishes the following requirements at § 1190.34:

##### Subsection (a)

Section 1190.34(a) requires that any building or facility or portion thereof subject to the Architectural Barriers Act that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, must comply with the accessibility requirements of § 1190.31, New construction, or incorporate the features listed in § 1190.33(c), Alterations. It further requires, where buildings complying with both §§ 1190.31 and 1190.33 are available, that reasonable preference be given to buildings offered for lease that meet the requirements for new construction. This recognizes that other requirements such as location may override the marginal increase in accessibility that a building meeting new construction standards might afford, compared to a building meeting the requirements for alterations.

##### Subsection (b)

Since facilities available for leasing by the Federal Government (other than those designed and constructed to meet



Federal standards) are limited to the building stock in a given locality that is offered on the market at that particular time, there may be cases where so space is offered for lease that meets either § 1190.31 or § 1190.33. To cover those situations, § 1190.34(b) establishes minimum guidelines and requirements that must be met by making alterations to the space before it can be occupied.

One comment from a Federal Department stated that more liberal provisions are necessary in order for Federal agencies to continue operations in certain small rural communities where accessible leased buildings are not available. In developing the rule, the ATCB was cognizant of the difficulties of Federal agencies in securing accessible leased facilities in certain communities and drafted the proposed rule accordingly. The proposed rule provided in § 1190.34(b) that, in many cases, buildings not otherwise in compliance with the minimum requirements set forth elsewhere in MGRAD would nonetheless be acceptable provided certain accessible features were present. The proposed rule also included, in § 1190.34(g), exceptions that should help to address this concern in some instances. Finally, Federal Departments, agencies, or instrumentalities which are unable to secure leased facilities that meet these requirements may apply to the appropriate standard setting agency, as provided in 24 CFR 40.5 (HUD), USPS Handbook RE-4, (51 FR 13122), 41 CFR 101-19.605 (GSA) or DOD Construction Criteria DOD 4270.1M (5/8/1985), for a waiver or modification of standards. In light of the foregoing, the Board has not amended the rule in response to this comment.

The requirements in subsection (b) assure that accessible routes are provided to those spaces where the principal functions are carried out and to certain building features—toilet rooms and parking areas—where such features are determined to be necessary for access to and use of the building or facility. These requirements in subsection (b) are intended to permit leased space to have an accessible route to public activity areas, public toilets, and other elements necessary for public access to or use of the space which are different from the accessible route to other areas such as those used by employees.

One comment found confusing the statement in § 1190.34(b)(1) that separate accessible routes may be provided to areas serving different users. In response, the following clarification is offered. The intent of this

subsection is to avoid requirements for accessible routes unnecessary in light of the nature of the facility and which, in all likelihood, would serve no useful purpose to any disabled person in most cases. For example, in a leased government bookstore with a retail outlet patronized by the public and a separate workroom for processing mail orders for employees only, there would have to be an accessible route to the workroom for employees and an accessible route to the retail outlet for the public. There is no requirement for an accessible route from the retail outlet to the workroom since there is no occasion for the public to enter the workroom. However, accessible routes would be required for members of the public to gain access to any other areas of the building necessary for public use such as restrooms, if provided to the public, and the means of access to other public areas (e.g., elevators). This subsection is not intended to require an accessible route between public use and other activity areas, where the different areas are intended to be kept separate.

Subsection (b) also specifies the minimum number of accessible toilet rooms that must be provided based on the number and locations of toilet rooms in the building or facility. Two modifications have been made to § 1190.34(b)(2)(i) to clarify the Board's intent with regard to the requirements for accessible toilets. A new § 1190.34(b)(2)(i)(B) has been substituted for the paragraph so denominated in the proposed rule. A new § 1190.34(b)(2)(i)(C) has also been added in the final rule. The effect of these two new provisions is to make it clear that in a leased building providing only one toilet per sex, one accessible toilet per sex or one accessible unisex toilet must be provided.

This subsection, moreover, is not intended to require accessible toilet or other facilities to be provided where the intended use of the facility does not require such facilities to be provided for non-handicapped persons. In post offices, for example, where the work area and public retail areas are typically kept separate, and typically only the employees are provided with toilet facilities, this subsection does not require that the public be provided with either a toilet in the public areas or an accessible route to the employee toilet. An accessible toilet and an accessible route to that toilet are required, however, if there is a public toilet.

The rule applies to buildings, facilities, or portions thereof leased by the Federal Government. If a portion of a building, such as a third floor, is

leased, the rule requires an accessible route from an accessible entrance to the building, not just from the entrance to the third floor.

Subsection 1190.34(b)(4) requires that consideration be given to providing certain other accessible spaces or features complying with appropriate MGRAD sections. This is consistent with 36 CFR 1190.33(c)(6) except with regard to parking. One comment stated that the proposed provisions regarding parking facilities are inadequate because they are limited to cases in which such facilities are addressed in lease agreements and parking is seldom addressed in leases. In fact, Federal leases are generally not silent on parking facilities. Therefore, no change has been made in this provision.

The intent of this provision is to parallel the approach to providing accessible parking taken in the new construction provisions of MGRAD. Those provisions state in § 1190.31(b)(1), with respect to new construction, that if parking is provided to the public or visitors, accessible parking must be provided. To require accessible parking spaces in leased facilities where other parking is not provided for under the lease would impose a heavier burden on leased property than MGRAD requires for new construction. It is not the intent of this provision to require Federal tenants to make special arrangements for accessible parking where no parking whatsoever is provided. However, where parking is provided for under a lease, or where it is otherwise available as in the case of a Federal tenant in a shopping center, parking and passenger loading zones complying with § 1190.60 should be provided to the extent feasible.

#### *Subsections (c) and (d)*

Subsection 1190.34(c) provides that when leased space is subsequently altered, the alterations are required to comply with § 1190.33, Alterations. Similarly, § 1190.34(d) provides that, if leased space is increased by the construction of an addition which is also leased by the Federal Government, the addition must be constructed in accordance with § 1190.32, Additions.

#### *Subsection (e)*

Section 1190.34(e) permits space to be leased without further alteration if it meets past or present state or local access codes or the standards recommended by the American National Standards Institute (ANSI) A117.1, and provides features required by § 1190.34. The purpose of this provision is to allow buildings which already have the



features needed for accessibility to the proposed area to be leased as is, even though the building may not comply in one respect or another with the present federally prescribed way of achieving the goal of accessibility. There are many buildings of relatively recent construction which were privately designed and constructed in accordance with ANSI A117.1 or with state or local building codes, which are generally consistent with or identical to standards recommended by ANSI. Thus, the rule permits the leasing of space that complies with other codes and that provides the accessibility features required by the rule, even though the space may not meet all of the technical requirements of this rule. For example, ANSI A117.1-1961 (R 1971) ("ANSI"), a standard currently in use by one-third of the states and previously used by several others, requires accessible toilets "with a seat 20" from the floor" (See, ANSI section 5.6.2). UFAS 4.16.3 requires that accessible toilets "shall be 17 to 19 in \* \* \* measured to the top of the toilet seat." Leased space with restrooms meeting the ANSI toilet height requirement would be permissible under this rule notwithstanding the requirement of UFAS.

Subsection (e) does not, however, permit leasing inaccessible space in a building which otherwise met non-Federal accessibility requirements referenced in this section.

Several comments expressed a concern about § 1190.34(e). This concern also relates to § 1190.34(f), which provides that once a leased space is made accessible, no new accessibility alterations can be compelled, except for alterations and additions covered by § 1190.34 (c) and (d), respectively. It is argued that § 1190.34 (c) and (d) taken together would perpetuate inadequate standards of accessibility and bar handicapped persons from buildings leased for Federal use. These comments point to the need for a reiteration of an important limitation to § 1190.34(e), which was explained in the preamble to the proposal and is stated in the regulation itself. Subsection (e) only permits the leasing of space conforming to local codes or the ANSI standard where such space also provides the accessibility features specified in this section. For example, a leased space meeting the local code but failing to provide an accessible route from an accessible entry, failing to provide accessible toilet facilities where they are provided to the public, or failing to provide accessible parking where parking is addressed in the Federal tenant's lease would not be in accord

with these minimum guidelines. On the other hand, a leased facility meeting the local code and providing these features would be acceptable even though it may deviate in minor respects from the technical provisions of the minimum guidelines.

#### Subsection (f)

This subsection provides that once leased space is accessible or made accessible under these provisions, no new accessibility alterations will be required, except where alterations or additions covered by § 1190.34 (c) and (d) are made.

In addition to the comment discussed above, another comment addressed the rule in § 1190.34(f) that once a leased building is deemed to be accessible under this section, it need not be further altered except under certain specified circumstances. This comment stated that, in any event, modifications should be required if necessary in order for disabled employees to perform their duties. In the event that a qualified handicapped employee is prevented from performing his or her duties as a result of being assigned to a leased facility not accessible to a person with his or her special needs, legal recourse may be available under either section 501 (29 U.S.C. 791) or section 504 (29 U.S.C. 794) of the Rehabilitation Act of 1973. Section 501 requires Federal agencies to have affirmative action plans for the hiring, placement and advancement of individuals with handicaps and section 504 prohibits discrimination in Federal programs on the basis of physical handicap.

#### Subsection (g)

Exceptions are specified in § 1190.34(g). The first exception is for cases where the space is necessary for officials servicing natural or human-made disasters. In such situations, space generally must be leased on an emergency basis, without the opportunity for planning. The second exception is for space leased for use on an intermittent basis. This allows leasing of special use spaces, such as Department of Defense test sites that may be used as locations for test instruments and are visited only on an intermittent basis to check or service such instruments. The third exception is for short-term leases not to exceed twelve months, which, for example, occasionally must be obtained quickly on short notice, when new leased space does not become available as planned (such as when a lease expires but unanticipated construction delays prevent the planned occupation of new space). As described below, in response

to a comment the final rule has been modified to provide that the short-term lease may not be renewed or extended for more than twelve months. The exception for short-term leases is intended to provide for continuity of government operations until such time as space meeting Federal accessibility requirements does become available.

An additional exception is provided for mechanical rooms and other spaces which normally are not frequented by the public or by handicapped employees of the occupant agency or which by nature of their use are not required to be accessible. This exception also is provided under § 1190.33, Alterations and § 1190.32, Additions.

One comment stated that these exceptions are inappropriate and unauthorized by the *Rose* decision cited in a preceding section. The *Rose* decision determined that certain leased facilities are covered by the Act. The ATBCB's authority to issue minimum guidelines and requirements is pursuant to section 502(b)(7) of the Rehabilitation Act of 1973. In the provisions of the Architectural Barriers Act which direct the four standard setting agencies to issue standards, Congress clearly specified that such standards were to insure access "whenever possible". See, 42 U.S.C. 4152, 4153, 4154, and 4154a. Since Congress provided for the exercise of discretion in the promulgation of the ABA's standards, it follows that some degree of discretion was also intended by Congress in the promulgation of the minimum guidelines and requirements for those standards.

The comment expressed concern that the exception for property leased on an "intermittent basis" lacks clarity. This exception is intended to cover a narrow class of special circumstances. For example, the occasional leasing of a specially equipped university laboratory for a short-term research project would qualify as a special use. Similarly, the leasing of an automotive proving grounds to test a piece of military equipment would be an intermittent use. The leasing of space in a shopping mall for a seasonal mail handling facility for the holiday season would be an "intermittent basis" lease. In applying this exception, the ATBCB expects agencies to weigh such factors as the special need for the facility in question, the duration of the lease, whether the lease has been renewed or extended, the whether the need for the facility is predictable and recurring.

The comment also expressed the concern that the exception for short-term (less than one year) leases would be abused by agencies seeking to



circumvent accessibility requirements by a succession of short-term leases for the same facility. In response, the ATBCB has amended § 1190.34(g)(1)(iii) to provide that such a short-term lease may only be renewed or extended where necessary, for example due to construction delays, for up to 12 months.

Another comment objected to § 1190.34(g)(2) which excludes from accessibility requirements mechanical rooms and other places in leased buildings not frequented by the public or disabled employees or which by their nature are not required to be accessible. The comment states that this provision could lead to discriminatory situations. The provision merely implements language of similar effect in the Act's definition of "building", which includes any building or facility "the intended use for which either will require that such building or facility be accessible to the public, or may result in employment or residence therein of physically handicapped persons \* \* \*." 42 U.S.C. 4151. Moreover, as noted previously, section 504 prohibits discrimination against qualified handicapped persons.

#### D. Other Information

This final rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291. The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations. With regard to § 1190.34, both the United States Postal Service and the General Services Administration, the two agencies which issue standards covering the majority of the buildings currently leased by the Federal Government that are subject to the Architectural Barriers Act, already have standards governing accessibility of leased buildings which in their view impose costs substantially equivalent to any impact of the proposed rulemaking.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing.

Accordingly, 36 CFR Part 1190 is amended as set forth below.

By vote of the Board on May 11, 1988.  
William J. Tangye,  
Chair, Architectural and Transportation  
Barriers Compliance Board.

36 CFR Part 1190 is amended as follows:

#### PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for Part 1190 continues to read as follows:

**Authority:** Section 502(b) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602), 92 Stat. 2979, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506).

2. The Table of Contents is revised by (1) removing the word "[Reserved]" after § 1190.34 in Subpart C and adding in its place the words, "Accessible buildings and facilities: Leased".

3. Section 1190.34 is amended by removing the word "[Reserved]" and all that follows and adding in lieu thereof the following provisions:

##### § 1190.34 Accessible buildings and facilities: Leased.

(a) Buildings or facilities or portions thereof leased by the Federal Government shall comply with § 1190.31, New construction, or shall incorporate the features listed in § 1190.33(c), Alterations. Where both types of buildings are available for leasing, reasonable preference must be given to buildings or facilities complying with § 1190.31, New construction.

(b) If space complying with paragraph (a) of this section is not available, space may be leased only if the space meets, or is altered to meet, the following conditions:

(1) At least one accessible route is provided from an accessible entrance complying with § 1190.120, Entrances, to those areas in which the principal activities for which the building or facility was leased are conducted. Separate accessible routes may be provided to areas serving different groups of users (e.g., the public, employees).

(2) The accessible route shall comply with the requirements of § 1190.50, Walks, floors, and accessible routes, and provide access to whatever accessible facilities are either required or provided, such as accessible toilets.

(i) Toilet facilities, to the extent required for the ready intended use of the building or facility, shall be provided as follows—

(A) Where more than one toilet for each sex is provided in a building or

facility, at least one toilet facility which complies with § 1190.150, Toilet and bathing facilities, shall be provided for each sex on each floor having toilets; or

(B) In a building or facility providing only one toilet for each sex, either one unisex toilet or one toilet for each sex complying with § 1190.150 shall be provided; or

(C) In a building or facility where only one toilet is provided, one unisex toilet complying with § 1190.150 shall be provided.

(ii) Parking facilities, if a parking area is included within the lease, shall be provided complying with § 1190.60, Parking and passenger loading zones, to the extent feasible.

(3) Where an agency determines that an area does not require the provision of toilets or parking facilities for the users or occupants of that area, nothing in this section shall be construed to require the provision of any such facilities.

(4) Consideration shall be given to providing accessible elements and spaces in each altered building or facility complying with:

(i) Section 1190.160 Drinking fountains and water coolers;

(ii) Section 1190.180 Alarms;

(iii) Section 1190.210 Telephones;

(iv) Section 1190.220 Seating, tables, and work surfaces;

(v) Section 1190.230 Assembly areas; and

(vi) Section 1190.240 Storage.

(c) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is subsequently altered, then the alterations shall comply with the requirements of § 1190.33, Alterations.

(d) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is increased by construction of an addition, the addition shall comply with § 1190.32, Additions, to the extent it is leased by the Federal Government.

(e) If leased space at the time of leasing meets past or present state or local codes or the recommended standards of the American National Standards Institute (ANSI) A117.1 for accessibility to physically handicapped people, and provides the features required by this section, the space may be used as is or altered to comply with the technical requirements of paragraph (a) or (b) of this section.

(f) Once leased space in an existing building is accessible or is made accessible hereunder, no new accessibility alterations shall be required under this subpart except where alterations or additions are made



to the building which are covered by paragraphs (c) and (d) of this section.

(g) *Exceptions.* (1) If no space complying with paragraph (a) or (b) of this section is available for leasing, space as available may be leased without alterations:

(i) If the lease is necessary for officials servicing natural or human-made disasters on an emergency basis;

(ii) If the space is used on an intermittent basis; or

(iii) If the occupancy of the space is for no more than twelve months. If delays occur during the twelve months, the short-term lease may be extended for no more than an additional 12 months.

(2) Mechanical rooms and other spaces which normally are not frequented by the public or employees with handicaps of the occupant agency or which by nature of their use are not required to be accessible are excepted from this section.

[FR Doc. 88-20251 Filed 9-13-88; 8:45 am]

BILLING CODE 6820-BP-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 232 and 252

#### Department of Defense Federal Acquisition Regulation Supplement; Progress Payments

**AGENCY:** Department of Defense (DOD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The interim rule revises progress payment rates on defense contracts to the levels currently provided in the Federal Acquisition Regulation.

**EFFECTIVE DATE:** October 1, 1988.

**COMMENT DATE:** Comments on the interim rule should be submitted to the address shown below on or before October 14, 1988.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC, 20301-3062. Please cite DAR Case 88-111 in all correspondence related to this subject.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

## SUPPLEMENTARY INFORMATION:

### A. Background

Under Section 9105 of the DoD Appropriations Act of 1987, Congress directed the Secretary of Defense to lower progress payment rates not less than 5 percentage points. Although not legislatively required by Congress, DOD extended this reduction to defense contracts awarded in fiscal year 1988 as well. The interim rule returns progress payment rates on defense contracts to the levels currently authorized in the FAR. Therefore, the FAR progress payment clauses will now be applicable to DOD contracts, except for contracts funded with fiscal year 1987 appropriations which will continue to use the existing DFARS progress payment clauses. Specifically, the interim rule: (1) Raises the customary progress payment rate for large businesses from 75 percent to 80 percent, and raises the customary progress payment rate for small businesses from 80 percent to 85 percent; (2) adjusts the amount of contractor investment required in work in process inventory for contracts with flexible progress payments; (3) reduces retainage on construction contracts from 15 percent to 10 percent; and (4) raises the basis for payment on architect-engineer contracts from 85 percent to 90 percent.

The interim rule will become effective on solicitations issued on or after October 1, 1988; it may also apply, at the discretion of the contracting officer, to awards currently in process if the resulting contract will be awarded on or after October 1, 1988.

Existing contracts shall not be modified to increase progress payment rates, decrease retainage rates, or raise the basis for payment. Additionally, the DFARS progress payment clauses shall be used only in contracts obligating fiscal year 1987 funds.

### B. Regulatory Flexibility Act

The proposed change to DFARS Part 232 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., because the progress payment rate for small businesses will be increased, the retainage rate on military construction contracts will be lowered and the basis for a payment on architect-engineer contracts will be increased. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for

Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from them. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88-610D in correspondence.

### C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this coverage. This action is necessary in order to provide appropriate financing levels on defense contracts based on current inflation and interest rates. This action will permit the Department of Defense to make progress payments at the same rates now provided in the FAR.

### List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

### PART 232—CONTRACT FINANCING

2. Section 232.103 is revised to read as follows:

#### 232.103 Progress payments construction contracts.

For DoD construction contract actions funded with FY 87 appropriations, the amount of retainage shall not exceed 15 percent. For all other DoD construction contracts, the amount of retainage shall not exceed 10 percent.

#### 232.111 [Amended]

3. Section 232.111 is amended by removing the period at the end of paragraph (S-71) and adding the words "and the contract is funded with FY 87 appropriations. The FAR clause at 52.232-5 shall be used for all other solicitations and contracts for construction when a fixed-price contract is contemplated."; by adding in



paragraph (S-72) between the word "in" and the word "fixed-price" the words "solicitations and" and by removing the period at the end of paragraph (S-72) and adding the words "when the contract is funded with FY 87 appropriations. The FAR clause at 52.232-10 shall be used for all other solicitations and fixed-price architect-engineer contracts."

4. Section 232.501-1 is amended by revising paragraph (a) to read as follows:

**232.501-1 Customary progress payment rates.**

(a) The customary progress payment rate applicable to DoD contracts awarded to large businesses is 75 percent and 80 percent for small businesses if the contracts are funded with FY 87 appropriations. The customary progress payment rate for all other DoD contracts is 80 percent for large businesses and 85 percent for small businesses. The customary progress payment rate applicable to Foreign Military Sales requirements is the same as that applicable to DoD requirements. The customary progress payment rate for flexible progress payments is the rate determined by use of either the CASHII, CASHIII, CASHIV, or CASHV computer program as applicable in accordance with the requirements of 232.502-1 (S-71).

5. Section 232.502-1 is amended by revising paragraphs (S-71) (2), (4), and (7) of paragraph (S-71) to read as follows:

**232.502-1 Use of customary progress payments.**

(S-71) *Customary flexible progress payments.*

(2) For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract. The contractor's investment is the weighted average of the amount not paid by the Government. DoD, as a matter of policy, has concluded that a contractor should retain at least a 20% investment in work in process inventory over the life of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 20%. The progress payment rate is to be determined by use

of the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments. For any contracts funded with FY 87 appropriations, a contractor must retain at least a 25% investment in work in process inventory over the life of the contract.

(4) The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASHV". For contracts funded with FY 87 appropriations, the computer file name "CASHV" shall be used. The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Contractors may obtain copies of the DoD Cash Flow Computer Model User's Guide from the Defense Technical Information Center, Building 5, Cameron Station, Alexandria, VA 22314. Contracting officers shall not grant contractors access to Government leased COPPER IMPACT time sharing computer network.

(7) A redetermination of the flexible progress payment rate shall be made upon the request of the Government or contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 22% or below 18%. The cash flow computer model is designed to generate a progress payment rate that yields a target investment of 20%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract. For contracts funded with FY 87 appropriations, the investment range is 23% to 27%, with a target investment of 25%.

6. Section 232.502-4 is amended by revising paragraphs (S-71) through (S-74) to read as follows:

**232.502-4 Contract Clauses.**

(S-71) The contracting officer shall insert the clause at 252.232-7004, Flexible Progress Payments, when a flexible progress payment rate is used in the contract. If the contract is funded with FY 87 appropriations, the clause shall be used with its Alternate I.

(S-72) The contracting officer shall insert the clause at 252.232-7007, Progress Payments, in lieu of FAR clause 52.232-16 and its Alternates I and II, as applicable, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16 and its Alternates I and II shall be used, as applicable, for all other solicitations and fixed-price contracts.

(S-73) If the contract is with a small business concern, the contracting officer shall use the clause at 252.232-7007, Progress Payments, with its Alternate I if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16, with its Alternate I shall be used for other fixed-price contracts with small business concerns.

(S-74) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16, with its Alternate II shall be used for all other letter contracts.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

7. Section 252.232-7004 is revised to read as follows:

**252.232-7004 Flexible Progress Payments.**

As prescribed at 232.502-4(S-71), insert the following clause:

**Flexible Progress Payments (Oct. 1988)**

This contract is subject to flexible progress payment procedures. The progress payment rate of this contract is —%, and this percentage applies in lieu of the uniform, standard progress payment rate and liquidation rate of the "Progress Payments" clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, (dated —), using twenty percent (20%) as the targeted rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract. If actual and projected cash flow data generated during performance of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Contractor in excess of twenty-two percent (22%) or less than eighteen percent (18%), the progress payment rate shall be determined by using the DoD Cash Flow Computer Model. Unless it



contained an error, the version of the DoD Cash Flow Computer Model that was used initially in this contract will be used for any redetermination permitted by this clause. In no event will the progress payment rate be less than the uniform, standard progress payment rate that would have applied to this contract absent flexible progress payment procedures, and in no event will the progress payment rate be greater than one hundred percent (100%). (End of clause.)

Alternate I (— 1988). If this contract is funded with FY 87 appropriations, change twenty percent (20%) to twenty-five percent (25%), change twenty-two percent (22%) to twenty-seven percent (27%), and change eighteen percent (18%) to twenty-three percent (23%).

[FR Doc. 88-20896 Filed 9-13-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 661

[Docket No. 80482-8082]

### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment.

**SUMMARY:** NOAA announces an adjustment to recreational ocean salmon management measures in the subarea from Trinidad Head to Punta Gorda, California. This adjustment reestablishes a daily bag limit of two salmon of any species and removes a current gear restriction so that there is no limit to the number of lines that a person may use while recreationally fishing off California. The Director, Northwest Region, NMFS (Regional Director), has determined that this adjustment is necessary to restore the management measures for the recreational fishery in this subarea to pre-season condition. This action is intended to allow maximum harvest of coho and chinook salmon in the subarea from Trinidad to Punta Gorda.

**EFFECTIVE DATE:** This inseason adjustment to recreational management measures in the exclusive economic zone (EEZ) from Trinidad Head to Punta Gorda, and from Horse Mountain to Point Delgada, California, is effective at 0001 hours local time, September 12, 1988. Comments on this action will be received through September 27, 1988.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand

Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The recreational fishery for all salmon species in the area from the Orford Reef Red Buoy, Oregon, to Horse Mountain, California, began on May 28, 1988, and was adjusted by notice on July 12, 1988 (53 FR 26599, July 14, 1988) by reducing the daily bag limit from two salmon of any species to one salmon of any species. The notice of July 12 also provided that no person may use more than one rod and line while recreationally fishing in the area from the Oregon-California border to Point Delgada, California (40°01'24" N. lat.). This fishery for Orford Reef Red Buoy to Horse Mountain scheduled to end September 11, 1988, and the inseason adjustment (53 FR 26599, July 14, 1988) will continue to have effect in the designated areas.

Since the subarea from Trinidad Head to Punta Gorda is within the larger areas of Orford Reef Red Buoy, Oregon to Horse Mountain, California, and the area from the Oregon-California border to Point Delgada, restrictions from this earlier inseason adjustment apply to recreational fishery for all salmon species in the subarea from Trinidad Head to Punta Gorda, California. The fishery in the subarea from Trinidad Head to Punta Gorda begins on September 12 and will continue through September 30, 1988 (53 FR 16010, May 4, 1988). This fishery is not governed by quotas. In order to allow maximum harvest of coho and chinook salmon in the subarea, from Trinidad Head to Punta Gorda it is necessary to change the inseason daily bag limit and gear restrictions, established in the notice of July 12 and restore the pre-season regulations, which provide for a two fish daily bag limit and no limit on the number of lines which may be used.

The one-rod limit also changed in the area between Horse Mountain and Point Delgada for the recreational fishery, which is continuing in the area. This area is part of the larger area from

Horse Mountain to the U.S.-Mexico border.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the EEZ from Trinidad Head to Punta Gorda, and Point Delgada, California, by increasing the recreational daily bag limit to two salmon of any species and modifying the gear restriction such that there is no limit to the number of lines that a person may use while recreationally fishing off California, effective at 0001 hours local time, September 12, 1988. The one-rod limit is also lifted in the area between Horse Mountain and Point Delgada for the recreational fishery, which is continuing in that area. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding this inseason adjustment to the recreational fishery. The State of California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action.

Any delay in taking this action would result in failure to maximize the allowable harvest of coho and chinook salmon. Because of the need for immediate action, the Secretary of Commerce had determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through September 27, 1988.

Federal regulations at 50 CFR 661.21(b)(1)(iii)-(iv) authorize changes in recreational bag limits and establishment or modification of gear restrictions if certain findings are made as described in the appendix to 50 CFR Part 661, Section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated fishing rights, and the ocean allocation scheme in the FMP. This inseason adjustment is based on consideration of the amount of recreational catch of coho and chinook salmon and recreational effort in the area to date, the estimated average daily catch per recreational fisherman, and the predicted recreational fishing effort for the area to the end of the scheduled season.



**Other Matters**

This action is authorized by 50 CFR 661.21(b)(1)(iii)-(iv) and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries,  
Conservation and Management, National  
Marine Fisheries Service.

[FR Doc. 88-20942 Filed 9-9-88; 4:45 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 204

#### Employment Relation

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise Part 204 of its regulations by removing obsolete material, simplifying the language therein, and by adding definitions of employment relation in connection with certain subjects which are not in the current regulations. Addition of those references should render the explanation of employment relation in Part 204 complete.

**DATE:** Comments must be received by October 14, 1988.

**ADDRESS:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

**SUPPLEMENTARY INFORMATION:** Section 3(i)(1) of the Railroad Retirement Act (Act) provides that in determining years of service only years subsequent to 1936 are counted. However, section 3(i)(3) provides that an individual who has less than 30 years of post-1936 service may have his service prior to 1937 counted so as to be credited with 30 years of service if he was actually working for a railroad employer on August 29, 1935, or was in an employment relation with such an employer on that date. Service by an individual to a local lodge or division of a railway labor organization is creditable under the Act only if preceded by actual service or an employment relation to a railroad on or after August 29, 1935 (see Part 203 of this chapter). Present Part 204 defines employment relation for purposes of crediting prior service and for establishing that service to a local lodge

or division of a railway labor organization is creditable under the Act. These provisions are extremely detailed. The Board proposes to remove unnecessary detail in these provisions and, thus, Part 204 will become clearer and easier to use.

An employment relation is also necessary for crediting pay for time lost under § 211.3 of the regulations and for crediting deemed service under § 210.3 of the regulations. Consequently, the Board proposes to add definitions of employment relation for those situations.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 60-611). In addition, no requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

#### List of Subjects in 20 CFR Part 204

Railroad employees.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended by revising Part 204 as follows:

#### Part 204—EMPLOYMENT RELATION

Sec.

204.1 Introduction.

204.2 Employment relation—determination by the Board.

204.3 Employment relation—general rules.

204.4 Conditions which preclude an employment relation.

204.5 Employment relation—deemed service.

204.6 Employment relation—pay for time lost.

Authority: 45 U.S.C. 231f.

#### § 204.1 Introduction.

In order for an individual to receive credit under the Railroad Retirement Act (Act) for railroad service prior to 1937, he or she must establish that he or she was actively working for an employer under the Act on August 29, 1935, or was in an employment relation to an employer on that date. In addition, in order for an individual to have his or her service to a local lodge or division of a railway labor organization considered as creditable service under the Act, he or she must establish that he or she was working for a railroad or in an

employment relation to a railroad on or after August 29, 1935, and that such employment or employment relation preceded his or her service to the local lodge or division. Section 204.3 of this part defines employment relation for these purposes. It is also necessary to establish an employment relation to an employer for any month in which an individual wishes to receive a deemed service month, as provided for in § 210.3 of this chapter, and to receive credit for pay for time lost as provided for in § 211.3 of this chapter. This part defines employment relation for these purposes.

#### § 204.2 Employment relation—determination by the Board.

The existence or non-existence of an employment relation, as defined in this part, is a conclusion which must be reached by the Board or its authorized officers or employees upon the basis of the evidence before the agency. The employer and the employee are the principal sources of evidence with respect to a determination whether an employment relation existed, but the Board will not be bound by the mere conclusion of the employer or the employee that the employee had or did not have an employment relation.

#### § 204.3 Employment relation—general rules.

An individual shall have an employment relation to an employer on August 29, 1935, for purposes of crediting service prior to January 1, 1937, or crediting service to a local lodge or division of a railway labor organization; if

(a) He or she was on that date on leave of absence expressly granted by the employer or by a duly authorized representative of such employer, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(b) He or she was in the service of an employer after that date and before January 1946 in each of six calendar months, whether or not consecutive; or

(c) Before that date he or she did not retire and was not retired or discharged from the service of the last employer by whom he or she was employed, but solely by reason of a physical or mental disability he or she ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he or she



attained age sixty-five or until August 1945; or

(d) Solely for the reason stated in paragraph (c) of this section an employer by whom he or she was employed before August 29, 1935, did not on or after August 29, 1935, and before August 1945 call him or her to return to service, or if he or she were called to return to service he or she for such reason was unable to render service in six calendar months as provided in paragraph (b); of this section or

(e) He or she was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his or her reinstatement in good faith to his or her former service with all his or her seniority rights.

#### **§ 204.4 Conditions which preclude an employment relation.**

(a) An individual shall not have been on August 29, 1935, an employee by reason of an employment relation if, during the last payroll period in which he or she rendered service to an employer prior to that date, such service was rendered outside of the United States to an employer not conducting the principal part of its business in the United States.

(b) An individual may not acquire an employment relation solely by virtue of service to a local lodge or division of a railway labor organization.

#### **§ 204.5 Employment relation—deemed service.**

For the purpose of crediting deemed service months as provided in § 210.3(b) of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be deemed. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, no employment relation may continue to exist with respect to an employer after an individual has resigned or relinquished his or her rights to return to the service of that employer or becomes entitled to receive an age and service annuity under this chapter.

#### **§ 204.6 Employment relation—pay for time lost.**

For the purpose of crediting pay for time lost as provided in § 211.3 of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be credited with pay for time lost. For that purpose an employment relation exists with respect to any month in which an individual although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, no employment relation may continue to exist with respect to an employer after an individual has resigned or relinquished his or her rights to return to the service of that employer.

Dated: September 6, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-20865 Filed 9-13-88; 8:45 am]

BILLING CODE 7905-01-M

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Social Security Administration**

#### **20 CFR Parts 404 and 416**

[Regulations Nos. 4 and 16]

#### **Evaluation of Symptoms, Including Pain**

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** We are proposing to expand our disability regulations pertaining to how we evaluate symptoms, including pain. We are proposing to include in these regulations additional explanations of the factors we consider for the purpose of establishing the existence of pain or other symptoms and functional limitations resulting from the symptoms in determining disability under titles II and XVI of the Social Security Act. These proposed regulations incorporate the terms of the statutory standard for evaluating pain and other symptoms in section 3 of the Social Security Disability Benefits Reform Act of 1984, and related statements of policy and interpretation now set forth in Social Security Rulings and program operating instructions.

**DATE:** We will consider your comments if we receive them no later than November 14, 1988.

**ADDRESSES:** Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** William J. Zielger, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-965-1759.

**SUPPLEMENTARY INFORMATION:** Section 223(d)(5) of the Social Security Act (the Act) states that to be considered under a disability, an individual must furnish medical and other evidence of the existence of such disability as we may require. This section did not specifically discuss the evaluation of symptoms, such as pain, until amended by the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460). Section 3(a) of Pub. L. 98-460 codified our policy for the evaluation of pain and other symptoms for determinations of disability made prior to January 1, 1987, by adding language to section 223(d)(5) and section 1614(a)(3) that embodied our existing policy. Although the statutory standard has expired, the Agency policy that it reflected remains in effect under our existing regulations for determinations made on and after January 1, 1987. We are amending these regulations to include a more detailed description of the policy that we follow in evaluating symptoms, such as pain. Because the statutory standard codified earlier Social Security policies for evaluating pain and other symptoms, and because the proposed regulatory amendment expressly adopts and incorporates those same policies, no substantive change in policy is intended by the proposed rule.

Section 10 of Pub. L. 98-460 requires the Secretary to publish regulations setting forth uniform standards for determining disability at all levels of adjudication.

To carry out the intent of the Congress as provided in section 3(a) to clearly define and set forth our policies for the evaluation of pain and other symptoms in determining disability, and to comply



with the requirements of section 10, we are proposing to expand 20 CFR 404.1529 and 416.929. The proposed changes to these sections will ensure that adjudicators at all levels clearly understand and uniformly adhere to the policy set forth in these sections.

At the same time that section 3(a) of Pub. L. 98-460 codified our present policy for the evaluation of symptoms, such as pain, section 3(b) of Pub. L. 98-460 called for the establishment of a Commission on the Evaluation of Pain to conduct a study, in consultation with the National Academy of Sciences, concerning the evaluation of pain in determining disability. A 20-member Commission, consisting of experts in the fields of medicine, law, insurance, and disability program administration, with significant concentration of expertise in the field of clinical pain, was appointed on April 1, 1985. The work of the Commission has been completed, and on September 11, 1986, the Secretary transmitted a copy of its report to the Congress. The report of the Commission may lead to future changes in our policy for evaluating pain and other symptoms. In the interim, our existing policies for the evaluation of pain and other symptoms will continue to apply.

The statutory language in section 3(a)(1) stated that "an individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability," but that " \* \* \* there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged \* \* \* ." The statute also stated that there must be medical signs and findings which, " \* \* \* when considered with all evidence \* \* \* (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability."

The policy for the evaluation of pain and other symptoms, as expressed in the statutory standard and clearly set forth in the proposed regulatory language, requires that: (1) To be found disabled an individual must first establish, by medical signs and laboratory findings, the presence of a medically determinable physical or mental impairment which could reasonably be

expected to produce the pain or other symptoms alleged; and (2) allegations about the intensity and persistence of pain or other symptoms must be considered in addition to the medical signs and laboratory findings in evaluating the impairment and the extent to which it may affect the individual's capacity for work.

In 20 CFR 404.1525 and 416.925, we are proposing to add a new paragraph (f) to explain how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments in Appendix 1 of Subpart P of Part 404.

The proposed revision of 20 CFR 404.1529 and 416.929 of our regulations will provide a more detailed discussion of our policy.

Paragraph (a) is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that we will consider, in deciding disability, a claimant's symptoms along with the objective medical evidence relating to the claimant's condition. The paragraph further explains that objective medical evidence means medical signs and laboratory findings as defined in 20 CFR 404.1528 (b) and (c) and 416.928 (b) and (c). Paragraph (a) also explains that statements by the individual, his or her treating or examining physician or psychologist, or other persons about the intensity, persistence, or functional effects of a symptom, such as pain, will not be disregarded, but will be part of the evidence considered in the decisionmaking process. However, such statements, standing alone, will not be a basis for a finding of disability.

Paragraph (b) describes the requirement that, to be determined disabled, an individual must first establish that he or she has a medically determinable physical or mental impairment, as evidenced by medical signs and laboratory findings, to which the allegations or reports of pain or other symptoms can reasonably be related. The paragraph further explains that when pain or other symptoms alleged are not consistent with the objective physical signs and laboratory findings, we will consider the possibility of a mental impairment being present. We will develop the possibility of a mental impairment when we have information to suggest that such an impairment exists.

Paragraph (c) explains how we evaluate the intensity and persistence of symptoms, such as pain, once it is established that an individual has a medically determinable physical or mental impairment. It also describes what types of evidence will be

considered in our assessment of the degree to which symptoms limit the individual's capacity for work activities.

Paragraph (c) also explains that we consider objective medical evidence, such as evidence of reduced joint motion, muscle spasm, sensory and motor disruption, as a usually reliable indicator from which to draw reasonable conclusions about the effects of pain or other symptoms on the individual's ability to work. We will always obtain this type of evidence when it is available and must always consider it in the disability evaluation.

Statements by the claimant and those of his or her treating or examining physician, psychologist, and other persons will also be obtained and considered. Statements that address the effect of the alleged pain or other symptom(s) on a person's work history and activities of daily living, as well as descriptions by the claimant, his or her treating or examining physician, psychologist and other persons about pain and other symptoms, the precipitating and aggravating factors, the medication taken or course of treatment which may have been followed, will become part of the evidence used to evaluate the individual's impairment and the effect of the impairment on his or her functional ability. They will be considered in conjunction with all other evidence of record in assessing any limitations imposed on the individual over and above those limitations which can be clearly demonstrated by the objective medical evidence in the record.

Symptoms, including pain, will be considered to diminish the individual's capacity for basic work activities to the extent that the individual's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence. The statements of the individual, his or her treating or examining physician, psychologist, or other persons, relative to pain or other symptoms, need not be fully corroborated by the medical signs and laboratory findings to establish that the pain or other symptoms impose limitations on the individual. But the evidence as a whole must be sufficient to clearly indicate that the symptoms alleged are compatible with the physical or mental medical signs and laboratory findings and could reasonably contribute to a conclusion of disability.

Paragraph (d) discusses how symptoms are evaluated in the sequential evaluation process. First, an individual who is not engaging in



substantial gainful activity must have a medically determinable severe impairment(s). Symptoms (for example, pain), signs and laboratory findings are considered in determining whether the impairment or combination of impairments is severe.

Second, once a severe impairment(s) is established, it must be determined whether it is the same as one of the impairments in the Listing of Impairments. (See 20 CFR Part 404, Subpart P, Appendix 1.) The Listing of Impairments sets forth criteria for certain conditions which are considered severe enough to prevent a person from doing gainful activity and to be disabling in the absence of substantial gainful activity. Symptoms may be criteria for certain listed impairments. Generally, if a symptom, such as pain, is a criterion, it need only be present along with the other requisite criteria. It is usually not necessary to determine whether there is functional loss associated with the pain or other symptoms.

Third, if a severe impairment(s) does not meet the listed criteria, it is necessary to determine whether the impairment(s) is medically equivalent to a listed impairment. Again, symptoms along with medical signs and laboratory findings are considered in making this determination. However, an allegation of pain or other symptoms, no matter how severe and persistent the pain or other symptoms are alleged to be, cannot be substituted for a missing or deficient medical sign or laboratory finding to raise impairment severity to equate with a listed impairment.

Fourth, when a severe impairment(s) is neither the same as nor equal to a listed impairment, the individual's remaining functional capacity for work-related activities must be established. We do not apply this step in determining entitlement to title II disabled widow's or widower's benefits or title XVI disabled child's benefits. In those cases we consider only the physical or mental impairment(s) and do not consider the individual's remaining capacity for work-related activities or the individual's age, education, or work experience. In establishing the residual functional capacity of an individual, the medical consultant if the claim is at the initial or reconsideration level or, if the claim is at the hearing or Appeals Council level, the administrative law judge or Appeals Council member, must consider the allegations of the individual, and the statements of his or her physician, psychologist, and other persons, along with the medical signs and laboratory findings to draw a

reasonable conclusion as to the individual's remaining capacity for work.

Additional regulatory changes concerning the evaluation of the effects of pain and other symptoms are being proposed to clarify certain points. To clarify how we evaluate symptoms, such as pain, in assessing residual functional capacity, we are proposing that paragraphs (a), (b), (c), and (d) of 20 CFR 404.1545 and 416.945 be modified and expanded and a new paragraph (e) be added to explain that we consider the total limiting effects of all impairments in determining residual functional capacity.

Also, section 3 of Pub. L. 98-460 made clear that pain is a symptom of an impairment and not an impairment in itself. To emphasize this, we are proposing to add new §§ 404.1569a and 416.969a to clarify the application of the medical-vocational guidelines in Appendix 2 of 20 CFR Part 404, Subpart P, when pain is a consideration. Paragraph (a) of proposed §§ 404.1569a and 416.969a explains that an individual's impairment(s) and related symptom(s), such as pain, may cause limitations of function or restrictions which may be exertional, nonexertional, or a combination of both. Limitations are exertional if they limit an individual's exertional capabilities, that is, affect his or her ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing and pulling. Current §§ 404.1567, 404.1569, 416.967 and 416.969 described how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy, and explain that this classification of jobs is incorporated into the rules in the medical-vocational guidelines. Paragraph (a) of proposed §§ 404.1569a and 416.969a explains that limitations which affect an individual's ability to meet the strength demands of jobs, that is, limitations which affect an individual's ability to sit, stand, walk, lift, carry, push, or pull, are considered exertional, and that limitations or restrictions which affect an individual's ability to meet the nonstrength demands of jobs, that is, demands other than

sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional.

Paragraphs (b), (c), and (d) of proposed §§ 404.1569a and 416.969a explain how we apply the medical-vocational guidelines in determining disability, depending on whether the limitations or restrictions imposed by an individual's impairment(s) and related symptom(s) are exertional, nonexertional, or a combination of both. Paragraph (b) explains that the rules in the medical-vocational guidelines directly apply when the impairment(s) and any related symptom(s), such as pain, impose only exertional limitations. Paragraph (c) explains that the rules in the medical-vocational guidelines do not direct factual conclusions of disabled or not disabled when the impairment(s) and related symptoms impose only nonexertional limitations and that, in such cases, the determination is made under the appropriate sections of the regulations, giving consideration to the rules in the medical-vocational guidelines. Paragraph (d) explains that where the limitations imposed by the impairment(s) and any related systems are both exertional and nonexertional the rules in the medical-vocational guidelines are used to direct a decision of the exertional limitations, by themselves, permit a finding of disability. If a rule does not direct a finding of disability, both the exertional and nonexertional limitations or restrictions imposed by the impairment(s) and any related symptoms are considered and the medical-vocational guidelines are used as a frame of reference to guide our decision.

We also propose to revise 20 CFR 404.1501(g) and 416.901(i) to include a brief description of the provisions in proposed §§ 404.1569a and 416.969a on when we consider a limitation exertional, nonexertional, or a combination of both for purposes of applying the medical-vocational guidelines.

## Regulatory Procedures

### Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these changes will have little or no effect on Title II or Title XVI benefit payments or administrative costs since no change in current policy is involved and because the proposed regulation does not meet any of the other criteria for a major rule. Therefore, a regulatory impact analysis is not necessary.



**Regulatory Flexibility Act**

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they only affect disability claimants and beneficiaries under Title II and Title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

**Paperwork Reduction Act**

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget. All information necessary to make the disability decisions discussed in this regulation is presently collected using forms which have the Office of Management and Budget clearance.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

**List of Subjects****20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

**20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: May 24, 1988.

Dorcas R. Hardy,  
Commissioner of Social Security.

Approved: July 28, 1988.

Otis R. Bowen,  
Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

20 CFR Part 404, Subpart P is amended as follows:

**Subpart P—Determining Disability and Blindness**

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)-(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)-(h), 416(i), 421 (a) and (i),

422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat 473; secs. 2(d) (2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Paragraph (g) of § 404.1501 is revised to read as follows:

**§ 404.1501 Scope of Subpart.**

(g) Our rules on vocational considerations are found in §§ 404.1560 through 404.1569a. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, describe and tell how to use the Medical-Vocational Guidelines in Appendix 2 of this subpart, and explain when, for purposes of applying the guidelines in Appendix 2, we consider the limitations or restrictions imposed by your impairment(s) and related symptom(s) to be exertional, nonexertional, or a combination of both.

3. Section 404.1525 is amended by adding paragraph (f) to read as follows:

**§ 404.1525 Listing of Impairments in Appendix 1.**

(f) *Symptoms as criteria of listed impairments.* Some listed impairments include symptoms usually associated with those impairments as criteria. For example, the listing for ischemic heart disease (4.04 of Appendix 1 of this subpart) includes a requirement of chest pain of cardiac origin. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are met.

4. Section 404.1529 is revised to read as follows:

**§ 404.1529 How we evaluate symptoms, including pain.**

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which objective medical evidence confirms these symptoms. By objective medical evidence we mean medical signs and laboratory findings as defined in § 404.1528 (b) and (c). We will

consider all of your statements about your symptoms, such as pain, and any description you, your physician, psychologist, or other persons may provide about how the symptoms affect your activities of daily living and your ability to work. However, statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are under a disability. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your capacity for work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* Your symptoms, such as pain, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. When you allege pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptom(s), we will consider the possibility of a medically determinable mental impairment as the basis for your symptoms.

(c) *Evaluating the intensity and persistence of your symptoms, such as pain.*—(1) *General.* When the medical



signs or laboratory findings show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain, we must then evaluate the intensity and persistence of your symptoms so that we can determine how your symptoms limit your capacity for work. In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements from you, your treating or examining physician, psychologist, and other persons about how your symptoms affect you.

(2) *Consideration of objective medical evidence.* Objective medical evidence is usually a reliable indicator from which we can make reasonable conclusions about the intensity and persistence of your symptoms and the effect those symptoms, such as pain, may have on your ability to work. Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, and sensory and motory disruption. We must always consider this type of evidence in reaching a conclusion as to whether you are under a disability.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information you or your treating or examining physician, psychologist, and other persons provide about your pain or other symptoms (e.g., what may precipitate or aggravate it, what medications, treatments or other methods you use to alleviate it, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Since symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you or your treating or examining physician, psychologist, and other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting

physician or psychologist, and observations by Social Security Administration employees and other persons. Factors relevant to your symptoms, such as pain, which we will consider include:

- (i) Your daily activities;
- (ii) The location, duration, frequency, and intensity of your pain or other symptoms;
- (iii) Precipitating and aggravating factors;
- (iv) The type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms;
- (v) Treatment, other than medication, you receive or have received for relief of your pain or other symptoms;
- (vi) Any measures you use or have used to relieve your pain or other symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and
- (vii) Other factors concerning your functional limitations and restrictions due to pain or other symptoms.

(4) *How we determine the extent to which symptoms, such as pain, affect your capacity to perform basic work activities.* Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* We follow a set order of steps to determine whether you are disabled. If you are not doing substantial gainful activity we consider your symptoms, such as pain, to evaluate whether you have a severe impairment(s), and at each of the remaining steps in the process. Sections 404.1520 and 404.1520a explain this process in detail. We also consider your symptoms, such as pain, at the appropriate steps in our review when we consider whether your disability continues. Sections 404.1579 and 404.1594 explain the procedure we follow in reviewing whether your disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* Your symptoms, such as pain, shortness of breath, and weakness, are considered in making a determination as to whether your impairment or combination of impairments is severe. (See § 404.1520(c).)

(2) *Decision as to whether the Listing of Impairments is met.* Some listed impairments include symptoms, such as

pain, as criteria. Section 404.1525(f) explains how we consider your symptoms when your symptoms are included as criteria for a listed impairment.

(3) *Decision as to whether the Listing of Impairments is equalled.* If your impairment is not the same as a listed impairment, we must determine whether your impairment(s) is medically equivalent to a listed impairment. Section 404.1526 explains how we make this determination. In making a determination, we cannot substitute your allegations of pain or other symptoms for a missing medical sign or laboratory finding to raise the severity of your impairment(s) to that of a listed impairment regardless of the degree of intensity, persistence or functional limitation you report.

(4) *Impact of symptoms (including pain) on residual functional capacity.* If you establish that you have a medically determinable severe impairment(s), but your impairment(s) does not meet or equal an impairment listed in Appendix 1 of this subpart, we will consider the impact of your symptoms, including pain, on your residual functional capacity. (See § 404.1545.) Paragraph (a) of this section explains that we must always consider all of the objective medical evidence along with your reports of symptoms, such as pain, when evaluating whether your impairment(s) is disabling. Paragraph (c) of this section explains how we examine all of the evidence, including the medical signs and laboratory findings, and statements by you, your treating or examining physician, psychologist, and other persons, to assess the impact of your symptoms and the degree to which they limit your ability to perform basic work activities.

5. Section 404.1545 is revised to read as follows:

**§ 404.1545 Your residual functional capacity.**

(a) *General.* Your impairment(s), including any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the



relevant evidence. It may include descriptions (even your own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of your medical condition. Observations by your treating or examining physicians, psychologists, your family, neighbors, or friends, and other persons, of your limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with your medical records to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569a, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions, may reduce your ability to do past work and other work. Other physical functions include manipulative or postural functions, such as reaching, handling, stooping or crouching.

(c) *Mental abilities.* When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce your ability to do past work and other work.

(d) *Other abilities affected by impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, impairments of vision, hearing or other senses, and impairments which impose environmental restrictions, may cause limitations and restrictions which affect

other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this subpart, we will consider the limiting effects of all your impairments, even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of sustained medium work exertion, but another person with the same disorder, because of pain, may not be capable of more than light work exertion on a sustained basis. In assessing the total limiting effects of your impairment(s) we will consider all of the medical and nonmedical evidence, including the information described in § 404.1529(c).

6. A new § 404.1569a is added to read as follows:

**§ 404.1569a Exertional and nonexertional limitations.**

(a) *General.* Your impairment(s) and related symptom(s), such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they limit your exertional capabilities, that is, they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 404.1567 and 404.1569 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations which affect your ability to meet the strength demands of jobs, that is, limitations which affect your ability to sit, stand, walk, lift, carry, push, or pull, are considered exertional. Limitations or restrictions which affect

your ability to meet the nonstrength demands of jobs, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. This distinction is only important when we are deciding whether you can do work other than your past work. Sections 404.1520(f) and 404.1594(f)(8) explain that if you can no longer do your past relevant work because of a severe medically determinable impairment(s), we must determine whether your impairment(s), when considered along with your age, education, and work experience, prevents you from doing any other work which exists in the national economy in order to decide whether you are disabled (§ 404.1520(f)) or continue to be disabled (§ 404.1594(f)(8)). Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in Appendix 2 of this subpart in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptom(s) are exertional, nonexertional or a combination of both.

(b) *Exertional limitations.* Where the limitations and restrictions imposed by your impairment(s) and related symptom(s), such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptom(s) only impose exertional limitations and your specific vocational profile is listed in a rule contained in Appendix 2 of this subpart, we will directly apply that rule to decide whether you are disabled.

(c) *Nonexertional limitations.* (1) Where the limitations and restrictions imposed by your impairment(s) and related symptom(s) affect only your ability to meet the nonstrength demands of jobs, we consider that you have only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

- (i) You are nervous, anxious, or depressed;
- (ii) You have difficulty maintaining attention or concentrating;
- (iii) You have difficulty understanding or remembering detailed instructions;
- (iv) You have difficulty in seeing or hearing;
- (v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or
- (vi) You have difficulty performing the manipulative or postural functions of



some work such as reaching, handling, stooping, or crouching.

(2) If your impairment(s) and related symptom(s) only affect your ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2.

(d) *Combined exertional and nonexertional limitations.* Where the limitations and restrictions imposed by your impairment(s) and related symptom(s) affect your ability to meet both the strength and nonstrength demands of jobs, we consider that you have a combination of exertional and nonexertional limitations or restrictions. If your impairment(s) and related symptom(s) affect your ability to meet both the strength and nonstrength demands of jobs, we will not directly apply the rules in Appendix 2 unless there is a rule that directs a conclusion that you are disabled based upon your strength limitations; otherwise we will use the rules as a framework to guide our decision.

#### *Appendix 2 to Subpart P—[Amended]*

7. Appendix 2 (Medical-Vocational Guidelines) of Subpart P is amended by revising paragraph (c) of 200.00 to read as follows:

##### *200.00 Introduction.*

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain.

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

#### **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

20 CFR Part 416, Subpart I is amended as follows:

#### **Subpart I—Determining Disability and Blindness**

1. The authority citation for Subpart I continues to read as follows:

**Authority:** Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, and 1802, and 1808.

2. Paragraph (i) of § 416.901 is revised to read as follows:

##### **§ 416.901 Scope of subpart.**

(i) Our rules on vocational considerations are found in §§ 416.960 through 416.969a. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, describe how the Guidelines in Appendix 2 of Subpart P of Part 404 of this chapter apply to claims under Part 416, and explain when, for purposes of applying the guidelines in Appendix 2, we consider the limitations or restrictions imposed by your impairment(s) and related symptom(s) to be exertional, nonexertional, or a combination of both.

3. Section 416.925 is amended by adding paragraph (f) to read as follows:

##### **§ 416.925 Listing of impairments in Appendix 1 of Subpart P of Part 404 of this chapter.**

(f) *Symptoms as criteria of listed impairments.* Some listed impairments include symptoms usually associated with those impairments as criteria. For example, the listing for ischemic heart disease (4.04 of Appendix 1 of Subpart P of Part 404 of this chapter) includes a requirement of chest pain of cardiac origin. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are met.

4. Section 416.929 is revised to read as follows:

##### **§ 416.929 How we evaluate symptoms, including pain.**

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which objective medical evidence confirms these symptoms. By objective medical evidence we mean medical signs and laboratory findings as defined in § 416.928 (b) and (c). We will consider all of your statements about your symptoms, such as pain, and any description you, your physician, psychologist, or other persons may provide about how the symptoms affect your activities of daily living and your ability to work. However, statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are under a disability. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your capacity for work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* Your symptoms, such as pain, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and findings, established by medically acceptable clinical and laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. When you allege pain or other symptoms, but the medical signs and



laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptom(s), we will consider the possibility of a medically determinable mental impairment as the basis for your symptoms.

(c) *Evaluating the intensity and persistence of your symptoms, such as pain.*—(1) *General.* When the medical signs or laboratory findings show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain, we must then evaluate the intensity and persistence of your symptoms so that we can determine how your symptoms limit your capacity for work. In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements from you, your treating or examining physician, psychologist, and other persons about how your symptoms affect you.

(2) *Consideration of objective medical evidence.* Objective medical evidence is usually a reliable indicator from which we can make reasonable conclusions about the intensity and persistence of your symptoms and the effect those symptoms, such as pain, may have on your ability to work. Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, and sensory and motor disruption. We must always consider this type of evidence in reaching a conclusion as to whether you are under a disability.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information you or your treating or examining physician, psychologist, and other persons provide about your pain or other symptoms (e.g., what may precipitate or aggravate it, what medications, treatments or other methods you use to alleviate it, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Since symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you or your treating or examining physician, psychologist, and other persons report which can reasonably be accepted as consistent

with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by Social Security Administration employees and other persons. Factors relevant to your symptoms, such as pain, which we will consider include:

- (i) Your daily activities;
- (ii) The location, duration, frequency, and intensity of your pain or other symptoms;
- (iii) Precipitating and aggravating factors;
- (iv) The type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms;
- (v) Treatment, other than medication, you receive or have received for relief of your pain or other symptoms?

(vi) Any measures you use or have used to relieve your pain or other symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Others factors concerning your functional limitations and restrictions due to pain or other symptoms.

(4) *How we determine the extent to which symptoms, such as pain, affect your capacity to perform basic work activities.* Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* We follow a set order of steps to determine whether you are disabled. If you are not doing substantial gainful activity we consider your symptoms, such as pain, to evaluate whether you have a severe impairment(s), and at each of the remaining steps in the process. Sections 416.920 and 416.920a explain this process in detail. We also consider your symptoms, such as pain, at the appropriate steps in our review when we consider whether your disability continues. Section 416.994 explains the procedure we follow in reviewing whether your disability continues.

(1) *Need to establish a severe medically determinable impairment(s).*

Your symptoms, such as pain, shortness of breath, and weakness, are considered in making a determination as to whether your impairment or combination of impairments is severe. (See § 416.920(c).)

(2) *Decision as to whether the Listing of Impairments is met.* Some listed impairments include symptoms, such as pain, as criteria. Section 416.925(f) explains how we consider your symptoms when your symptoms are included as criteria for a listed impairment.

(3) *Decision as to whether the Listing of Impairments is equalled.* If your impairment is not the same as a listed impairment, we must determine whether your impairment(s) is medically equivalent to a listed impairment. Section 416.926 explains how we make this determination. In making a determination, we cannot substitute your allegations of pain or other symptoms for a missing medical sign or laboratory finding to raise the severity of your impairment(s) to that of a listed impairment regardless of the degree of intensity, persistence or functional limitation you report.

(4) *Impact of symptoms (including pain) on residual functional capacity.* If you establish that you have a medically determinable severe impairment(s), but your impairment(s) does not meet or equal an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter, we will consider the impact of your symptoms, including pain, on your residual functional capacity. (See § 416.945.) Paragraph (a) of this section explains that we must always consider all of the objective medical evidence along with your reports of symptoms, such as pain, when evaluating whether your impairment(s) is disabling. Paragraph (c) of this section explains how we examine all of the evidence, including the medical signs and laboratory findings, and statements by you, your treating or examining physician, psychologist, and other persons, to assess the impact of your symptoms and the degree to which they limit your ability to perform basic work activities.

5. Section 416.945 is revised to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) *General.* Your impairment(s), including any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will



consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as a physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even your own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of your medical condition. Observations by your treating or examining physicians, psychologists, your family, neighbors, or friends, and other persons, of your limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with your medical records to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969a, your vocational background is considered along with your residual functional capacity in arriving at a disability decision.

(b) *Physical abilities.* When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions, may reduce your ability to do past work and other work. Other physical functions include manipulative or postural functions, such as reaching, handling, stooping or crouching.

(c) *Mental abilities.* When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work

setting, may reduce your ability to do past work and other work.

(d) *Other abilities affected by impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, impairments of vision, hearing or other senses, and impairments which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of Subpart P of Part 404 of this chapter, we will consider the limiting effects of all your impairments, even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable to sustained medium work exertion, but another person with the same disorder, because of pain, may not be capable of more than light work exertion on a sustained basis. In assessing the total limiting effects of your impairment(s) we will consider all of the medical and nonmedical evidence, including the information described in § 416.929(c).

6. A new § 416.969a is added to read as follows:

**§ 416.969a Exertional and nonexertional limitations.**

(a) *General.* Your impairment(s) and related symptom(s), such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they limit your exertional capabilities, that is, they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 416.967 and 416.969 explain how we use the classification of jobs by exertional levels (strength demands)

which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations which affect your ability to meet the strength demands of jobs, that is, limitations which affect your ability to sit, stand, walk, lift, carry, push, or pull, are considered exertional. Limitations or restrictions which affect your ability to meet the nonstrength demands of jobs, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. This distinction is only important when we are deciding whether you can do work other than your past work. Sections 416.920(f) and 416.994(b)(5)(viii) explain that if you can no longer do your past relevant work because of a severe medically determinable impairment(s), we must determine whether your impairment(s), when considered along with your age, education, and work experience, prevents you from doing any other work which exists in the national economy in order to decide whether you are disabled (§ 416.920(f)) or continue to be disabled (§ 416.994(b)(5)(viii)). Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in Appendix 2 of Subpart P of Part 404 of this chapter in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s), and related symptom(s) are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* Where the limitations and restrictions imposed by your impairment(s) and related symptom(s), such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptom(s) only impose exertional limitations and your specific vocational profile is listed in a rule contained in Appendix 2, we will directly apply that rule to decide whether you are disabled.

(c) *Nonexertional limitations.* (1) Where the limitations and restrictions imposed by your impairment(s) and related symptom(s) affect only your ability to meet the nonstrength demands of jobs, we consider that you have only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) You are nervous, anxious, or depressed;



(ii) You have difficulty maintaining attention or concentrating;

(iii) You have difficulty understanding or remembering detailed instructions;

(iv) You have difficulty in seeing or hearing;

(v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or

(vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, or crouching.

(2) If your impairment(s) and symptom(s) only affect your ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2.

(d) *Combined exertional and nonexertional limitations.* Where the limitations and restrictions imposed by your impairment(s) and related symptom(s) affect your ability to meet both the strength and nonstrength demands of jobs, we consider that you have a combination of exertional and nonexertional limitations or restrictions. If your impairment(s) and related symptom(s) affect your ability to meet both the strength and nonstrength demands of jobs, we will not directly apply the rules in Appendix 2 unless there is a rule that directs a conclusion that you are disabled based upon your strength limitations; otherwise we will use the rules as a framework to guide our decision.

[FR Doc. 88-20877 Filed 9-13-88; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

26 CFR Parts 1, 501, 504, 505, 506, 507, 511, 512, 518, 519, and 602

[INTL-952-86]

### Allocation and Apportionment of Interest Expense and Certain Other Expenses

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking including cross-reference to temporary regulations.

**SUMMARY:** This document provides proposed Income Tax Regulations

relating to the allocation and apportionment of interest expense and certain other expenses for purposes of the foreign tax credit rules and certain other international tax provisions. In the rules and regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking. Certain additional regulations are also proposed by this document. This document also withdraws the notice of proposed rulemaking relating to the same subject that appeared in the **Federal Register** on September 11, 1987 (52 FR 34580).

**DATES:** These regulations are proposed to be effective for taxable years beginning after December 31, 1986. In general, these regulations would be applicable to the allocation and apportionment of interest expense and certain other expenses for taxable years beginning after December 31, 1986. Comments and requests for a public hearing must be delivered or mailed before December 13, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue (Attention: CC:LR:T, INTL-952-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** David Merrick, regarding the allocation and apportionment of interest expense, and Carl Cooper, regarding the allocation and apportionment of other expenses, both of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T (INTL-952-86)) (David Merrick 202-566-6276, Carl Cooper 202-634-5406, not a toll-free call).

### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The affirmative elections in this regulation are in § 1.861-9T(g)(1)(ii), which requires taxpayers affirmatively

to elect either the gross income or the asset method of apportionment in the case of a controlled foreign corporation, and in § 1.861-12T(c)(4)(ii), which permits taxpayers to elect under certain circumstances to reallocate interest expense that is allocated to a noncontrolled section 902 corporation. This information will be used in audits of taxpayers. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden: 2,500 hours.

Estimated annual burden per respondent: 10 minutes.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: On occasion.

This estimate is an approximation of the average time expected to be necessary to make the affirmative elections. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

### Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new temporary regulations §§ 1.861-8T through 1.861-14T. For the text of the temporary regulations, see FR Doc. 88-20838 [T.D. 8228] published in the rules and regulations portion of this issue of the **Federal Register**. Certain additional regulations are also proposed by this document.

### Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because it has been determined that these proposed regulations are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

### Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and



copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of the proposed regulations relating to the allocation and apportionment of interest expense is David Merrick, and the principal author of the proposed regulations relating to the allocation and apportionment of other expenses is Carl Cooper, both of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

#### List of Subjects

26 CFR 1.861-1 through 1.997-1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

The temporary regulations, FR Doc. 88-20838 [T.D. 8228], published in the rules and regulations portion in this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 861 and 864 of the Internal Revenue Code of 1986. In addition, the regulations set forth below are also proposed as amendments to the Income Tax Regulations (26 CFR Part 1).

The proposed amendments to 26 CFR Part 1 relating to this same subject and published on September 11, 1987 (52 FR 34580) are hereby withdrawn.

#### Income Tax Regulations

##### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citations:

**Authority:** 26 U.S.C. 7805. \* \* \* Section 1.861-10 is also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).

**Par. 2.** Section 1.861-10 is added at the appropriate place to read as follows:

**§ 1.861-10 Special allocations of interest expense.**

(a) through (b)(3)(iii) [Reserved]

(v) *Analysis of operating costs.* For taxable years beginning after December 31, 1988, if operating costs other than interest with respect to the property exceed 15 percent of the total income derived from the property in the taxable year (for example, rents or royalties), then a significant portion of revenue shall be considered to be derived from sales, labor, services, or the use of other property. For this purpose, the term "operating costs" shall include only expenses that are deductible solely under section 162.

(b)(3)(v) through (4)(vi) [Reserved]  
(vii) The term "qualified nonrecourse indebtedness" shall not include any transaction that involves excess collateralization within the meaning of paragraph (b)(12) of this section.

(b)(5) through (11) [Reserved]  
(12) *Excess collateralization.* For taxable years beginning after December 31, 1989, a loan will be deemed to involve excess collateralization if the principal amount of the loan is less than 60 percent of the value of identified property at the time of its purchase (or construction cost in the case of self-constructed assets). If the principal amount of the loan is greater than 80 percent of such value, then the loan will be deemed not to involve excess collateralization. If the principal amount of the loan is within the range of 60 to 80 percent of such value, the determination of whether the loan involves excess collateralization shall be based on facts and circumstances, taking into account factors such as the ratios of loan-to-value in comparable nonrecourse borrowings within the relevant industry or geographic market.

(c) through (e) [Reserved]

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-20839 Filed 9-9-88; 8:45 am]

BILLING CODE 4830-01-M

#### DEPARTMENT OF AGRICULTURE

##### Forest Service

##### 36 CFR Part 261

##### Prohibitions; Forest Development Trails

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Forest Service proposes to amend 36 CFR 261.12 and 36 CFR 261.55 to control use on Forest development trails based upon type of vehicle, type of traffic, and/or vehicle characteristics. The current rules prohibit certain transportation uses and

modes of transport, as well as size of vehicles based on width. The rules have proven confusing, outdated, and difficult to enforce. The intended effect of the proposed rule is to provide Forest Supervisors more flexibility to choose the best method of managing trail use and to eliminate the necessity of periodically revising the rules because of changes in design and manufacture of vehicles suitable for trail use.

**DATE:** Comments must be received by November 14, 1988.

**ADDRESSES:** Send written comments to F. Dale Robertson, Chief (2350), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule modification in the Office of the Director, Recreation Staff, Room 4225, South Building, 14th and Independence SW, Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Lennon, Recreation Staff, (202) 447-2311.

**SUPPLEMENTARY INFORMATION:** Part 261 of the Code of Federal Regulations sets forth acts and conduct prohibited on National Forest System lands. Subpart A sets forth general prohibitions applicable to all lands, including on forest development roads and trails. Subpart B authorizes Forest Service line officers to close or restrict an area and to prohibit specific uses by issuance of orders.

At 36 CFR 261.12(e), the use of a motorized vehicle over 40 inches in width is prohibited on any forest development trail. This "40-inch" rule was originally intended to prohibit four-wheel drive vehicle use on Forest development trails. It was not based on trail design standards, but rather on the types of vehicles being manufactured at the time. Since this prohibition was promulgated, manufacturers have created a variety of vehicles that are suited for trail use but, depending upon the model, may exceed the 40-inch rule by 1 to 5 inches.

These changes in vehicle design have led to confusion among users and created law enforcement difficulties for National Forest System users and the Forest Service. For example, a family using a trail designated for all-terrain-vehicles (ATV's) or snowmobiles may encounter the situation where two of their family members can legally ride on the trail, but a third member cannot, because one vehicle model is slightly over 40 inches wide. Because of the Forest Service prohibition, some users have attempted to modify their vehicles



to conform to the 40-inch rule. Such modifications which can result in machine instability and safety problems shouldn't be necessary. Generally, trails that will accommodate a 40-inch wide vehicle will also accommodate slightly wider models.

The proposed amendment would remove the general prohibition on use of motorized vehicles in excess of 40 inches in width on a trail and instead, allow each Forest Supervisor to control unacceptable motorized vehicle use on trails by issuance of specific prohibitions designated by order pursuant to 36 CFR Part 261, Subpart B. The proposed action gives the Forest Supervisor the authority to choose the best method of managing trail use.

Under the proposed amendment, the Forest Supervisor order could prohibit types of use on trails on the basis of the following: (1) The type of vehicle (ATV, snowmobile, four-wheel drive, motorcycle, etc.); (2) types of traffic or mode of transport (motorized, non-motorized, foot, horses, pack stock traffic, etc.); and (3) vehicle characteristics (length, width, weight, height, two-wheel, three-wheel, four-wheel, etc.). By establishing these broad categories of types of use, vehicles, and traffic, the proposed rule would thus eliminate the need for the present specific prohibitions against using a bicycle or motorized vehicle (§ 261.55(b)), possessing or using a saddle, pack, or draft animal (§ 261.55(c)).

The proposed amendments would make § 261.55 more consistent with the rules at 36 CFR Part 295—Use of Motor Vehicles Off Forest Development Roads which speaks to control of use by "types of vehicles" and with Forest Land and Resource Management Plans (36 CFR Part 219) which designate roads, trails, and areas for use by types of traffic. The amendments also would closely parallel regulations pertaining to control of traffic on Forest development roads, an important factor, since trail vehicles are frequently used on Forest development roads. Consistency between trail and road regulations reduces user confusion and law enforcement problems.

The public is invited to submit written comments on the proposed rule which will be analyzed and considered in promulgating a final rule.

This proposed rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. The regulation applies to individual recreation users in a limited situation and will have no effect on competition, employment, investment, productivity, innovation, or the ability of the United

States-based enterprises to compete in foreign markets.

It has also been determined this action will not have a significant economic impact on a substantial number of small entities.

This rule is determined to be limited in context and intensity and to produce little or no environmental effects, individually or cumulatively, to either the biological or physical component of the human environment. Therefore, it is unnecessary to prepare an environmental assessment or an environmental impact statement.

#### List of Subjects in 36 CFR Part 261

Law enforcement, National Forests.

Therefore, for the reasons set forth in the preamble, Subparts A and B of Chapter II of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 261—PROHIBITIONS

1. The authority citation for Part 261 continues to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

#### Subpart A—General Prohibitions

##### § 261.12 [Amended]

2. Amend § 261.12 by removing paragraph (e).

#### Subpart B—Prohibitions in Areas Designated by Order

3. Revise § 261.55 to read as follows:

##### § 261.55 Forest development trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a forest development trail:

- (a) Being on a trail.
- (b) Using any type of vehicle prohibited by the order.
- (c) Use by any type of traffic or mode of transport prohibited by the order.
- (d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.
- (e) Shortcutting a switchback in a trail.

Date: August 25, 1988.

George M. Leonard,  
Associate Chief.

[FR Doc. 88-20940 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-11-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[FRL-3445-1]

#### Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

**SUMMARY:** USEPA is proposing to approve a site-specific revision to the Indiana State Implementation Plan (SIP) for ozone. The revision would provide for a alternative compliance schedule for Uniroyal Plastics Company, Incorporated (Uniroyal), which is located in St. Joseph County, Mishawaka, Indiana. This SIP revision would approve an extension in compliance for Uniroyal from December 31, 1986 until November 7, 1987, allowing Uniroyal's reformulation of its coatings for two fabric coaters and four vinyl printers. This action is taken in response to a July 23, 1987, request from the State of Indiana.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by November 14, 1988.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency,  
Region V, Air and Radiation Branch,  
230 South Dearborn Street, Chicago,  
Illinois 60605.

Office of Air Management, Indiana  
Department of Environmental  
Management, 105 South Meridian  
Street, P.O. Box 6015, Indianapolis,  
Indiana 46206-6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Uylaine E. McMahan, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:** On July 23, 1987, the Indiana Department of Environmental Management submitted to USEPA a request for a site-specific revision revising Indiana's ozone SIP. This revision consists of compliance date extensions for Uniroyal's two fabric coaters and four vinyl printers at its Mishawaka plant, located in St.



Joseph County, Indiana, which is designated as an urban nonattainment area for ozone.

Under the existing federally approved SIP, each fabric coater is subject to VOC control requirements contained in Rule 325 IAC 8-2-12, and each vinyl printer is subject to VOC control requirements contained in Rule 325 IAC 8-5-5. The fabric coaters and vinyl printers are subject to the compliance requirements contained in Rule 325 IAC 8-1.1-3. This Rule requires compliance by December 31, 1986. USEPA approved these rules as meeting the reasonably available control technology (RACT)<sup>1</sup> requirements of the Clean Air Act on February 10, 1986 (51 FR 4912).

#### Compliance Date Extension Policy

USEPA's August 7, 1986, memorandum, "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC Sources" from J. Craig Potter, Assistant Administrator for Air and Radiation, states that the compliance date extension policy requires that any extension which goes beyond 3 years past adoption of the applicable rule should be closely scrutinized for expeditiousness:

This should include an examination of the compliance status of other sources nationally in the same volatile organic compound (VOC) category (this examination would be the responsibility of the State), and the most expeditious means of compliance available (including add-on control equipment, process change, or raw materials improvement) irrespective of the method proposed in the SIP revision.

In addition, this policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant, "Reasonable Further Progress" (RFP) towards timely attainment.

USEPA's specific criteria for evaluating compliance date extensions for VOC sources are contained in the August 7, 1986, compliance date extension policy. These criteria must be met in order for an extension to be approved.

#### Criterion 1

The State must demonstrate that the extension will not interfere with attainment and maintenance of the

ozone standard and, where relevant, RFP toward attainment.

This proposed compliance date extension will not interfere with attainment, maintenance or RFP. USEPA previously approved a modeling analysis for St. Joseph and Elkhart Counties (February 10, 1986 (51 FR 4912)). This modeling analysis did not rely upon emission reductions from this facility. Therefore, since there is no increase in actual emissions as a result of this compliance date extension, this existing, approved modeling analysis is not undermined.

In addition, the three most recent of quality assured ozone monitoring data (1984-86) support this modeling analysis. Finally, this compliance date extension is of short duration and has already expired.

#### Criterion 2

Time extensions must also be consistent with the requirement that nonattainment SIPs provide for implementation of all reasonably available control measures as expeditiously as practicable. Expeditiousness should be demonstrated by determining when the source was first put on notice of the applicable requirement and the time that has elapsed since then.

USEPA has generally determined that for most VOC sources, a compliance schedule that does not extend beyond three years after adoption of the applicable rule can be considered expeditious. Indiana adopted the applicable regulation on November 7, 1984. Because this extension is no longer than three years after the adoption of the applicable rules, it can be considered expeditious.

#### Conclusion

USEPA is proposing to approve this compliance date extension because it is expeditious and will not jeopardize attainment and maintenance of the ozone standard.

USEPA is providing a 60-day comment period on this notice of proposed rulemaking. Public comments received on or before November 14, 1988. Will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401-7642.

Dated: December 29, 1987.

Frank M. Covington,  
Acting Regional Administrator.

Editorial Note: This document was received at the office of the Federal Register on September 8, 1988.

[FR Doc. 88-20781 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR PART 52

[FRL 3446-3]

#### Approval and Promulgation of Implementation Plans; California State Implementation Revision—Six Districts in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

**SUMMARY:** EPA proposes to approve several revisions to the California State Implementation Plan (SIP) including rules adopted by six air pollution control districts: the Bay Area Air Quality Management District (AQMD), the Monterey Bay Unified Air Pollution Control District (APCD), the Sacramento County APCD, the San Diego County APCD, the South Coast AQMD, and the Tulare County APCD. California submitted these revisions to EPA on June 9, 1987 and September 1, 1987. These submittals consist of regulations which control emissions of volatile organic compounds (VOCs). EPA has evaluated each of the regulations addressed in this notice and has determined that they should be approved.

**EFFECTIVE DATE:** Comments must be received on or before October 14, 1988.

**ADDRESSES:** Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: SIP Section (A-2-3), Air Management Division.

Copies of the rules and of EPA's Evaluation Report for each rule are available for inspection during normal business hours at EPA, Region 9. All of the rules are also available at the Air Resources Board address listed below. Rules of specific districts are available at the districts which adopted them. The addresses are given below.

California Air Resources Board,  
California General Projects Section,

<sup>1</sup> A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.



Technical Support Division, P.O. Box 2815, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

Sacramento County Air Pollution Control District, 9323 Tech Center Drive, Sacramento, CA 95826.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

Tulare County Air Pollution Control District, Health Services Department, Division of Environmental Health, Health Building—County Civic Center, Visalia, CA 93291.

#### FOR FURTHER INFORMATION CONTACT:

Anita Tenley, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7644; FTS 454-7644.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 9, 1987 and September 1, 1987 the State of California submitted to EPA a series of revisions to its SIP. Some of those revisions are proposed for approval in this notice. Others are being addressed in separate notices. These revisions consist of regulations which control emissions of VOCs. A brief description of each of the regulations by submittal date and district is provided below. EPA's evaluation and proposed action follow the description of the regulations.

##### Description of Regulations

June 9, 1987 submittal

##### Bay Area AQMD

Regulation 8, Rule 18—Valves and Flanges at Petroleum Refineries  
Regulation 8, Rule 41—Vegetable Oil Manufacturing Operations

##### Monterey Bay Unified APCD

Rule 1001—Solid Waste Disposal Sites

##### San Diego County APCD

Rule 61.0—Definitions

Rule 61.1—Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals

Rule 61.2—Transfer of Organic Compounds Into Mobile Transport Tanks

Rule 61.3—Transfer of Volatile Organic Compounds Into Stationary Storage Tanks

Rule 61.6—New Source Performance Standards (NSPS) Requirements for Storage of Volatile Organic Compounds

Rule 61.7—Spillage and Leakage of Volatile Organic Compounds

Rule 61.8—Certification Requirements for Vapor Control Equipment

##### South Coast AQMD

Rule 443.1—Labeling of Materials Containing Organic Solvents

##### Tulare County APCD

Rule 410—Organic Solvents

Rule 410.3—Organic Solvent Degreasing Operations

September 1, 1987 submittal

##### Sacramento County APCD

Rule 442—Architectural Coatings

##### South Coast AQMD

Rule 1102.1—Perchloroethylene Dry Cleaning Systems

##### EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, EPA policy, and 40 CFR Part 51. We have also reviewed them to determine if they weaken or strengthen the existing SIP. All of the rules proposed for approval in this notice meet the requirements of the Act, 40 CFR Part 51, and EPA policy. In addition, most of the rules result in a strengthening of the existing SIP.

Monterey Bay Unified APCD Rule 1001 and Tulare County APCD Rule 410 are proposed for approval under section 110 of the Clean Air Act. Rule 1001 is a new rule requiring solid waste assessment tests at solid waste disposal sites to determine the emission of specified air contaminants from those sites. Rule 410 has been revised to delete an obsolete compliance date. Both rules have been evaluated by EPA and have been found to satisfy the requirements of the Clean Air Act, EPA policy, and 40 CFR Part 51.

The following revisions include minor changes to existing rules which are expected to result in an increased effectiveness and enforceability of those rules: Bay Area AQMD Regulation 8, Rule 18, San Diego County APCD Rules 61.0, 61.6, 61.7, and 61.8, and South Coast AQMD Rule 1102.1. These rules are proposed for approval under section 110 of the Clean Air Act.

The Tulare County APCD Rule 410.3 has been revised so that the rule additionally applies to the solvent cleaning of surfaces other than metal. Sacramento County APCD Rule 442 has been amended to eliminate small business exemptions, and to include new VOC limits for dry fog coatings.

These two rules will result in a reduction of VOC emissions, and therefore should be approved under section 110 as a strengthening of the existing SIP.

South Coast AQMD Rule 443.1 is a new rule requiring the labeling of materials containing organic solvents. While similar to a previously approved rule, this more definitive rule should result in better enforcement and decreased VOC emissions, and is proposed for approval under section 110 of the Clean Air Act. EPA notes that it has already found that the South Coast ozone plan as a whole does not provide for attainment of the ozone standard as required by section 172(a)(2) of the Act (53 FR 1780, January 22, 1988). EPA believes that, during the period before the State of California submits a new plan that will meet that requirement, EPA may approve, under its general section 110 authority, any individual plan revision submitted by the State that does not interfere with attainment or progress toward attainment. EPA believes that South Coast AQMD Rules 443.1 and 1102.1 satisfy that test.

Certain rules are also being proposed for approval under Part D of the Clean Air Act as representing reasonably available control technology (RACT) for those sources covered by the proposed rules. Under EPA's interpretation of section 172(b)(3) of the Clean Air Act, areas which are designated nonattainment for ozone under the National Ambient Air Quality Standard (NAAQS) must adopt, at a minimum, RACT for certain categories of sources.

EPA has established a presumptive norm of what constitutes RACT for several categories of VOC sources through the issuance of Control Techniques Guidelines (CTGs). The following rules have been evaluated by EPA and have been found to be consistent with the presumptive norm set in the CTGs: San Diego County APCD Rules 61.1, 61.2, and 61.3.

Rule 61.1 retains the same requirements as the current rule previously approved under Part D as RACT and has only been revised to improve clarity. Rule 61.2 establishes an emissions limit for gasoline loading facilities loading more than 5,000,000 gallons per year which will result in additional emissions reductions compared to those from the previously approved rule. Rule 61.3 adds an exemption for the testing of tanker truck liquid meters by the San Diego County Department of Weights and Measures. EPA agrees that the increase in emissions resulting from this exemption



is negligible and not reasonable to control.

The new Bay Area AQMD Regulation 8, Rule 41 concerning vegetable oil manufacturing operations is consistent with the technical information contained in the draft CTG prepared for this category and should also be approved under Part D of the Clean Air Act.

#### EPA Proposed Action

EPA proposes to approve the following rules under section 110 of the Clean Air Act because they satisfy the requirements of the Act, 40 CFR Part 51, and EPA policy: Bay Area AQMD Regulation 8, Rule 18, Monterey Bay Unified APCD Rule 1001, Sacramento County APCD Rule 442, San Diego County APCD Rules 61.0, 61.6, 61.7, and 61.8, South Coast AQMD Rules 443.1 and 1102.1, and Tulare County APCD Rules 410 and 410.3.

EPA will not take final action to approve the Sacramento County rule until it has taken final action on the Sacramento 1982 ozone plan. EPA proposed to disapprove that plan on July 14, 1987 (52 FR 26431).

EPA proposes to also approve certain rules under Part D of the Clean Air Act because it has been determined that they meet EPA's approval criteria, and have been found to represent reasonably available control technology for those rule categories. The rules proposed for approval under Part D are: Bay Area AQMD Regulation 8, Rule 41, and San Diego County APCD Rules 61.1, 61.2, and 61.3.

#### Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR PART 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: March 29, 1988.

Daniel W. McGovern,  
Regional Administrator.

[FR Doc. 88-20909 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

#### Information Requested on Changes in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Request for information.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain animal and plant species, which are listed in appendices to this treaty. Any nation that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This notice announces plans by the Fish and Wildlife Service (Service) to develop U.S. proposals to: (1) Amend Appendices I and II, (2) certify Appendix I species as bred in captivity for commercial purposes, (3) annotate certain Appendix I plant species in order to more strictly regulate artificially propagated hybrids of these species, or (4) add or exempt specified parts and/or derivatives of plant species in Appendix II. The Service especially invites information and comments from the public on plant species that should be considered as candidates for U.S. proposals. Such proposals may concern the addition of species to Appendix I or II, the transfer of species to another, or the removal of species from Appendix II or I. The Service will use the information and comments received in determining whether to develop proposals for the next regular meeting of CITES Party nations.

**DATE:** The Service will consider all information and comments received by December 13, 1988, in determining whether it should develop proposals on particular species.

**ADDRESSES:** Please send correspondence concerning this notice to the Office of Scientific Authority, Mail Stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, at address given above, or telephone (202) 653-5948.

**SUPPLEMENTARY INFORMATION:** This is the first in a series of Federal Register

notices about proposals to amend CITES Appendix I or II that will be considered at the seventh regular biennial meeting of the Parties. The purpose of this notice is to solicit information that will help the Service to identify: (1) Species that are candidates for addition, removal or reclassification in the appendices, (2) Appendix I animal species for which there is sufficient information and a need to certify certain captive stock(s) of the species as "bred in captivity," (3) Appendix I plant species should be annotated in accordance with resolution Conf. 6.19 so that artificially propagated hybrids of these species would be regulated in the same manner as the species, and (4) parts and derivatives of Appendix II plants that warrant regulation. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning wild animal or plant species occurring anywhere in the world, although U.S. proposals submitted for recent meetings of the Parties have focused on species native to the United States.

#### Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. The term "species" is defined in CITES as "any species, subspecies, or geographically separate population thereof." Each species for which trade is controlled is included in one of three appendices. The basic standards for including species in the appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Further guidance on criteria for adding or deleting species in the appendices is contained in resolutions Conf. 1.1 and 1.2.

For animals in Appendix I or II and plants in Appendix I, any readily recognizable part or derivative thereof is automatically included, by language in CITES, when the species is listed in the appendices. All parts and derivatives of plants listed in Appendix II are included, with certain exceptions, by



amendment and resolutions at several Conferences of the Parties. The standard exception is that the parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: seeds, spores, pollen (including pollinia), tissue cultures, and flaked seedling cultures. See also 50 CFR 23.23(d) for further exceptions and limitations. Nonstandard exceptions in seven families either include in or exempt from listing certain additional parts and derivatives. See 50 FR 48212 (November 22, 1985), codified in 50 CFR 23.23(d). The Service is especially interested in knowing of any additional plant parts or derivatives that may be appropriate to propose for exemption.

Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other parties in controlling trade. The present notice concerns only Appendices I and II.

The Parties have adopted a format for proposals to amend Appendix I or II, in order to ensure that certain types of information are provided. It is as follows:

- A. Proposal
- B. Proponent (nation)
- C. Supporting statement
1. Taxonomy
  11. Class
  12. Order
  13. Family
  14. Genus, species or subspecies, including author(s) and year
  15. Common name(s), including English common name(s), when applicable, and French and Spanish common names, if known
  16. Code numbers, when applicable, e.g., International Species Inventory System (ISIS) number
2. Biological data
  21. Distribution (current and historical)
  22. Population (estimates and trends), and relevant information on population
  23. Habitat (trends)
3. Trade data
  31. National utilization
  32. Legal international trade
  33. Illegal trade
  34. Potential trade threats
  341. Live specimens
  342. Parts and derivatives
4. Protection status
  41. National
  42. International
  43. Additional protection needs
5. Information on similar species (addressing the issue of similarity of appearance)
6. Comments from countries of origin (other than proponent)
7. Additional remarks
8. References (to published literature and other documents)

Prior to the sixth meeting of the Conference of the Parties held in

Ottawa, Canada, in July 1987, the Management Authority of the country of export was permitted, in accordance with paragraph 4 of Article VII, to designate specimens of Appendix I species as "bred in captivity" (as defined in resolution Conf. 2.12) for commercial purposes and to issue permits that allow Appendix I specimens so designated to be traded as Appendix II species under the terms of Article IV. Because of instances in which some specimens of species that were difficult to propagate were being improperly issued permits indicating that they were "bred in captivity," the Parties determined, in resolution Conf. 6.21, that before a Management Authority could designate species as "bred in captivity" the Parties must first accept that the species could be readily bred in captivity as specified in Conf. 2.12. Those species already registered with the CITES Secretariat as "bred in captivity," i.e., *Lutra lutra*, *Branta sandvicensis*, *Anas laysanensis*, *Falco cherrug*, *Falco jugger*, *Falco peregrinus*, *Falco rusticolus*, *Lophura edwardsi*, *Tragopan caboti*, *Crocodylus niloticus*, and *Crocodylus porosus*, do not need Party acceptance.

Therefore, in accordance with Conf. 6.21, proposals documenting that the species is being bred in captivity in accordance with Conf. 2.12 must be submitted to and accepted by a two-thirds vote of the Parties before any Management Authority can register a facility as producing specimens as "bred in captivity," and thereby being entitled to export Appendix I specimens from such captive stocks under the terms of Article IV. Even after acceptance by the Parties that a species can be bred in captivity, the Management Authority in the country of export is still responsible for ensuring that each facility registered with the Secretariat meets the criteria of Conf. 2.12 for the species for which that facility is being registered.

Certificates for specimens meeting "bred in captivity" criteria will continue to be issued for Appendix II species and for Appendix I species when not bred for commercial purposes in accordance with paragraph 5 of Article VII. Therefore, proposals and acceptance by the Parties will be needed only if specimens of Appendix I species were bred for commercial purposes. The Service proposes to consider applying the provisions of paragraph 4 of Article VII of CITES only to those operations engaged in the business of breeding Appendix I wildlife for commercial purposes, e.g., a private U.S. breeder engaged in the business of breeding live animals for sale to individuals or pet stores in other countries, or breeding

animals to obtain hides to be exported for manufacture into leather goods.

Those that have a need to submit proposals on species that should be considered as "bred in captivity" should review Conf. 2.12 because each criterion should be addressed in the proposal. Conf. 2.12 criteria for "bred in captivity" certification stipulate that the parental breeding stock should be: (1) Established in a manner not detrimental to the survival of the species in the wild, (2) maintained without augmentation from the wild, except to prevent deleterious inbreeding, and (3) managed in a manner designed to maintain the breeding stock indefinitely.

The following rationale is offered to assist in the interpretation of these Conf. 2.12 criteria and comments on this reasoning would be appropriate. The Service believes that the intent of Conf. 2.12 was to provide a "closed" captive-breeding population, thus eliminating the threat to wild populations. Therefore, maintenance of the breeding stock should be achieved without any replacement with wild-caught individuals. If sufficient founder animals were used in establishing the captive breeding population and if the population was managed to minimize inbreeding, then augmentation with wild stock should seldom be necessary. Nevertheless, in those instances in which inbreeding does threaten the maintenance of a viable captive population, Conf. 2.12 does permit such augmentation. However, breeders should first seek to resolve inbreeding problems by incorporating captive-bred animals, and the augmentation with wild-caught animals should require review by the Management Authority. Also, if animals that cannot be released to the wild are placed at a facility by an authorized government agency, these could be incorporated into the breeding population(s) without loss of its "bred in captivity" status.

Secondly, in order to reduce/eliminate problems that may result from inbreeding, the population should contain at least six founder animals (unrelated individuals). This number of course is not likely to be adequate to maintain sufficient genetic diversity for eventual reestablishment of a wild population of the species (usually considered to require at least 30 founders), but it should reduce the likelihood of inbreeding problems that would require augmentations of the captive population with wild-caught animals.

With regard to whether the captive population is being managed to be maintained indefinitely, at least three



aspects would seem to be appropriate expectations. First, the production of second generation captiveborn stock should be demonstrated (if not reliably achieved by the applicant, then verifiable information documenting such an achievement by others); second, sufficient numbers of each generation should be producing to ensure replacement stock and to minimize inbreeding; and third, there should be a strategy for incorporating the appropriate numbers of offspring into the breeding population. Thus, at least 100 percent of the minimum number of founders should produce offspring and 80 percent of those first generation animals selected for parental stock produce offspring.

Therefore, the proposal should show the source and date of acquisition of each animal in the breeding population, as well as information to show that the original stock was obtained in a manner not detrimental to the wild population. The proposal should indicate how the population is being managed to minimize deleterious inbreeding. Furthermore, the proposal should indicate what percentage of each generation has produced offspring, identify the average number of animals produced annually, include a plan showing how offspring are incorporated into the breeding population, and document that the species is maintained at other locations so that a single catastrophe would not eliminate the captive population in the United States.

Furthermore, while Conf. 2.12 is written as if a single facility must meet all of the criteria for the captive-breeding population to be considered as "bred in captivity," the Service will consider proposals in which several institutions or individuals are maintaining and managing a captive population as a single entity. In these cases, fuller documentation will be expected to show how the management is coordinated and what steps would be taken to ensure maintenance of the population if one or more members of such a consortium fails to fulfill its responsibilities.

Finally, in accordance with Conf. 6.21 the proposal should contain information on the marking system that meets, as a minimum, the requirements of the "uniform marking system" described in Conf. 5.16 and for live birds of Appendix I species, the marking system should be such that the birds are individually marked with a permanent closed ring of the appropriate size.

Artificially propagated hybrids of certain Appendix I plant species can be traded with simply a certificate of artificial propagation (just as artificially

propagated Appendix II species and their hybrids are traded), following resolution Conf. 6.19, adopted at the sixth meeting of the Conference of the Parties held in Ottawa, Canada, in July 1987. This resolution endorses the actual practice of most CITES Parties. For this resolution to take full effect for species presently listed in Appendix I, a review is necessary to determine which Appendix I species warrant having their artificially propagated hybrids regulated more strictly under an export permit (or re-export certificate). The Service is therefore particularly interested in comments that would identify and justify those Appendix I plant species that may need to have their artificially propagated hybrids regulated as the species, because the hybrid has genes of value to the especially rare species or because the hybrid is difficult to create or to propagate, or because of other reasons some of which are referred to in Doc. 6.32 accompanying the draft of resolution Conf. 6.19. For the majority of plant species in Appendix I, the Parties believe that none of the above concerns that would require stricter regulation of the hybrids apply.

#### Future Actions

The next regular meeting of the Parties is tentatively scheduled to be held in October, November, or December, 1989. Any proposals to amend Appendix I or II at the meeting must be submitted to the CITES Secretariat at least 150 days prior to the meeting (i.e., to be received by the Secretariat about April 1, 1989), and the Service plans to send any such proposals to the Secretariat in March 1989.

The Service plans to publish a **Federal Register** notice in January 1989 to announce tentative species proposals of the United States and to invite information and comments on them. Another notice in April 1989 will announce the Service's final decision on species proposals submitted to the CITES Secretariat. In future notices, the Service also will address the development of a U.S. negotiating position on the other issues and on proposals by other Parties to amend Appendix I or II.

Persons having comments and information on species that might be potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

#### List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: September 2, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-20963 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-55-M

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 651

[Docket No. 80873-8173]

##### Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NOAA issues this advance notice of proposed rulemaking (ANPR) to make the public aware of a proposal to amend the implementing regulations for the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) to include a certification program whereby whole, fresh groundfish smaller than the minimum sizes established in the FMP could be imported into the United States. This ANPR is in response to concerns raised by several New England fish processors that the current regulations prohibiting the importation of undersized groundfish deprive the processing sector of an adequate supply of whole, fresh groundfish.

**DATE:** Comments must be submitted on or before November 14, 1988.

**ADDRESS:** Send comments on the ANPR to Richard B. Roe, Regional Director, NMFS, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Certification Program".

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill (Resource Policy Analyst, NMFS), 508-281-3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801, *et seq.*, the Secretary of Commerce (Secretary), in consultation with regional fishery management councils, is authorized to take such measures as are necessary to conserve and manage the fishery resources within the U.S. exclusive economic zone (EEZ).



Under the Magnuson Act, regional fishery management councils prepare management plans for special fisheries within a geographic region. The plans are then implemented by the Secretary through Federal regulations.

The groundfish fishery is an important and traditional fishery in the New England region. Species harvested in that fishery include cod, haddock, yellowtail flounder, pollock, redfish, white hake and a variety of other flounders. In recent years, the fishery has been severely overfished and is in need of effective management and conservation measures. In March 1986, the New England Fishery Management Council (Council) submitted for Secretarial approval the FMP, which established new conservation measures for the New England groundfish fishery. Although the FMP did not provide an adequate long-term strategy to manage the fishery, it was a step in the right direction and the Secretary approved the FMP and its implementing regulations for the interim period of October 1, 1986 to September 30, 1987.

One of the regulatory measures in the FMP prohibited the harvesting and landing of seven species of fish smaller than specified minimum sizes. Another regulatory measure prohibited the importation of cod, haddock, and yellowtail flounder smaller than the minimum sizes specified for those species in the FMP. The importation prohibition was included because cod, for example, caught within U.S. jurisdiction is indistinguishable from cod caught outside U.S. jurisdiction. Thus, the importation prohibition on severely stressed species was necessary to discourage the practice of harvesting undersized fish from U.S. waters and selling them as imported fish or commingling them with undersized imported fish. No comments were received on the importation prohibition during the preparation of the FMP.

A separate factor, which is related to the indistinguishable nature of fish and which generates a significant amount of concern on the part of harvesters is the international boundary dividing the ocean areas of the Gulf of Maine and Georges Bank in the North Atlantic Ocean. The international boundary delineates the respective jurisdictions of the United States and Canada. As a consequence, the same fishery stocks inhabiting these areas on both sides of the boundary are managed under different conservation measures on each side of the boundary, which the United States using minimum sizes and Canada using a quota system (i.e., setting specific quality allocations which may

be harvested). Thus, small fish from the same population may be legally harvested on one side of the boundary and not on the other. These stocks are commonly referred to as transboundary stocks.

In May 1987, the Council submitted for Secretarial approval Amendment 1 to the FMP. Amendment 1 was designed to improve and strengthen the conservation measures of the FMP. Included in Amendment 1 were increased minimum sizes for some of the seven regulated species and an extension of the importation prohibition to all regulated species for which a minimum size was specified. No comments on these measures were received, and the fishing industry and the New England Congressional delegations strongly supported approval of Amendment 1. The Secretary approved Amendment 1 and its implementing regulations effective October 1, 1987 (52 FR 35093, October 5, 1987).

When NMFS begin enforcing the regulations implementing the increased minimum sizes of Amendment 1 and the expanded import prohibition, several fish processors from Maine and Massachusetts alleged that the import prohibition was depriving them of a substantial supply of whole, fresh fish coming to their cutting houses from other countries, primarily Canada. The processors claimed that foreign fish suppliers are unwilling to sort fish according to size and that a processor must buy small and large fish together or buy none at all. The processors were concerned that the amended regulations would significantly reduce the supply of fish available to cut in the United States and would result in lost jobs and lost profits in the U.S. fresh-fish fillet market. These processors predicted that Canadian processors will process that fish in Canada, ship it into the United States in fresh fillet form, and take over those markets formerly belonging to U.S. processors.

The processors voiced their concerns to the Council at its meeting of October 7, 1987, in Mystic, Connecticut and asked the Council to adopt measures that would allow the importation of undersized fish. The Council responded by passing a motion which directed its Groundfish Committee (Committee) to develop a possible solution for the Council to consider.

A week after the Council's vote to study the alleged problem, Stinson Canning Company, a processor from Prospect Harbor, Maine, filed a complaint against the Secretary in the Federal District Court of Maine. The

complaint challenges the import prohibition of the FMP regulations and requests relief in the form of a declaratory judgment that the import prohibition applies only to undersized fish caught in the U.S. EEZ or, in the alternative, that the Court enjoin enforcement of the import prohibition with respect to fish caught outside the U.S. EEZ. The parties agreed to, and the Court granted, three consecutive continuances in the case, pending the outcome of the Council's efforts to develop and endorse some measures that would accommodate the concerns of the processors and possibly settle the case without further litigation. However, the Council, as discussed below, was unable to endorse the certificate of origin program (certification program) that was proposed as a possible accommodation, and the litigation is pending.

In addition to the complaint filed by the Stinson Canning Company, officials from Canada, Norway, and Iceland, through their respective embassies in the United States, expressed concern over the importation prohibition and its potential fisheries trade impacts. The U.S. State Department response to these concerns reiterated the important conservation and enforcement justification for the import prohibition and indicated that the Secretary, through the fishery management council process, was exploring possible alternatives to the import prohibition. The Secretary, therefore, encourages any interested foreign countries to comment on this ANPR.

In December 1987, the Committee designated a subcommittee to explore the possibility of a certification program for legally harvested, imported fish which do not comply with U.S. size standards. The subcommittee worked with some representatives of the processing sector and with enforcement officials from Maine, Massachusetts, and NMFS to develop a proposal for a certification program. By late January 1988, the subcommittee had developed a proposed certification program (outlined below) for consideration by the Committee. After reviewing the proposal, the Committee decided to solicit comments on the proposal from the processing sector and to put the proposal, along with the comments, before the full Council at its April 1988, meeting in Mystic, Connecticut.

During February 1988, the Council mailed a questionnaire to approximately 300 fishery brokers and processors from Maine to New York. The questionnaire provided an outline of the proposed certification program and requested



industry comments on the program, as well as information on the import activity of each processor. Response to the mailing was poor, and a second mailing was sent. At the conclusion of the comment period, 43 processors and five brokers had responded. A total of 17 favored the program, three provided general support for the concept, nine opposed it, and 19 had no comment. Together, the respondents accounted for approximately 82.5 million pounds of imported groundfish, of which 90% was graded by size before reaching the processor (it was estimated that this accounted for approximately 60% of the total ground fish imports, based on a comparison of NMFS fishery import statistics for 1987).

On March 31, 1988, the Committee met to review the proposal in light of the responses to the questionnaire. The Committee added the following modifications to the proposed program: (1) The program should be implemented on a trial basis for a period of only 18 months, and should be continued only if the Council makes a positive determination that the program is meeting its objectives; and (2) the point of shipment in Canada of imported undersized fish should be reported to NMFS as part of the data reporting requirements for importer/processors and importer/brokers for the purpose of determining, as well as possible, how much of this fish was coming from transboundary stocks. The Committee also decided that one or more public hearings were necessary to solicit comments from the harvesting industry and other interested parties.

The Committee then voted to make two recommendations to the full Council. The first recommendation was that the proposed program, as modified, be accepted by the Council for forwarding to the Secretary for publication as a proposed rule and regulatory amendment to the FMP regulations. The second was that a public hearing be held for the Council to receive further comment on the proposal, after which the Council would submit to the Secretary, as a comment on the proposed rule, a final determination on the program and further guidance based on comments received at the public hearing. At its April 6, 1988, meeting in Mystic, Connecticut, the Council adopted the

Committee's recommendation and scheduled a public hearing on the proposal to be held concurrently with its May 18, 1988, meeting in Danvers, Massachusetts.

By letter of April 21, 1988, the Council requested that the Secretary draft a proposed rule on the certification program for publication in the *Federal Register*. After reviewing the proposal, the Secretary determined that more information needed to be collected to prepare an Environmental Assessment, Regulatory Impact Analysis/Regulatory Flexibility Analysis, and Paperwork Reduction Act justification for the proposed rule. Because of the comments received at the public hearing and the Council's decision to reject the certification program (discussed below), a proposed rule has not been prepared.

Approximately 200 members of the Council's constituency attending the public hearings. Harvesters from Maine to New York were present, as were a number of processors. There was almost total unanimity among those present at the hearing in opposing the proposed program. Conservation, economic, and enforcement concerns were raised by those testifying. Comments received are summarized as follows:

1. *Harvesters*—The certification program would seriously compromise the conservation objectives of the FMP. The program would subvert current high compliance with the minimum fish sizes by creating a loophole which would allow "black market" dealings in undersized fish harvested from the U.S. EEZ. The incentive to harvest undersized fish from the U.S. EEZ would return with implementation of the certification program. As long as there is a mechanism to allow undersized fish to be imported, mixing with undersized domestic product will occur and compliance with minimum sizes will drop.

2. *Processors*—Eight processors from New Bedford, Massachusetts, opposed the program, stating that they did not need the program under the current minimum sizes, that the undersized product was undesirable, that relations between harvesters and processors were good, and that the current supply of fish was adequate. One Maine processor supported the program on the basis that it would ensure an adequate supply of whole, fresh fish.

3. *General*—Original support for the proposed certification program was based on the assumption that it would not include transboundary stocks from Georges Bank and the Gulf of Maine. The proposed program does not include a restriction on the importation of transboundary stocks harvested outside U.S. jurisdiction. This was a major reason for opposition from the harvesting sector.

4. *General*—A lack of enforcement of the current measures of the FMP was given as a reason for the shortcomings and expected failure of the program. The inadequacy of existing enforcement manpower was cited and examples were given on how some undersized groundfish are now being imported with little enforcement detection.

5. *General*—There was repeated concern over economic hardship resulting from the undersized imported fish flooding the market. It was stated that U.S. product cannot compete with the lower-priced imported fish. It was alleged that U.S. processors would opt to handle the cheaper Canadian product. A number of interested parties stated that the resultant lower prices would force them out of business.

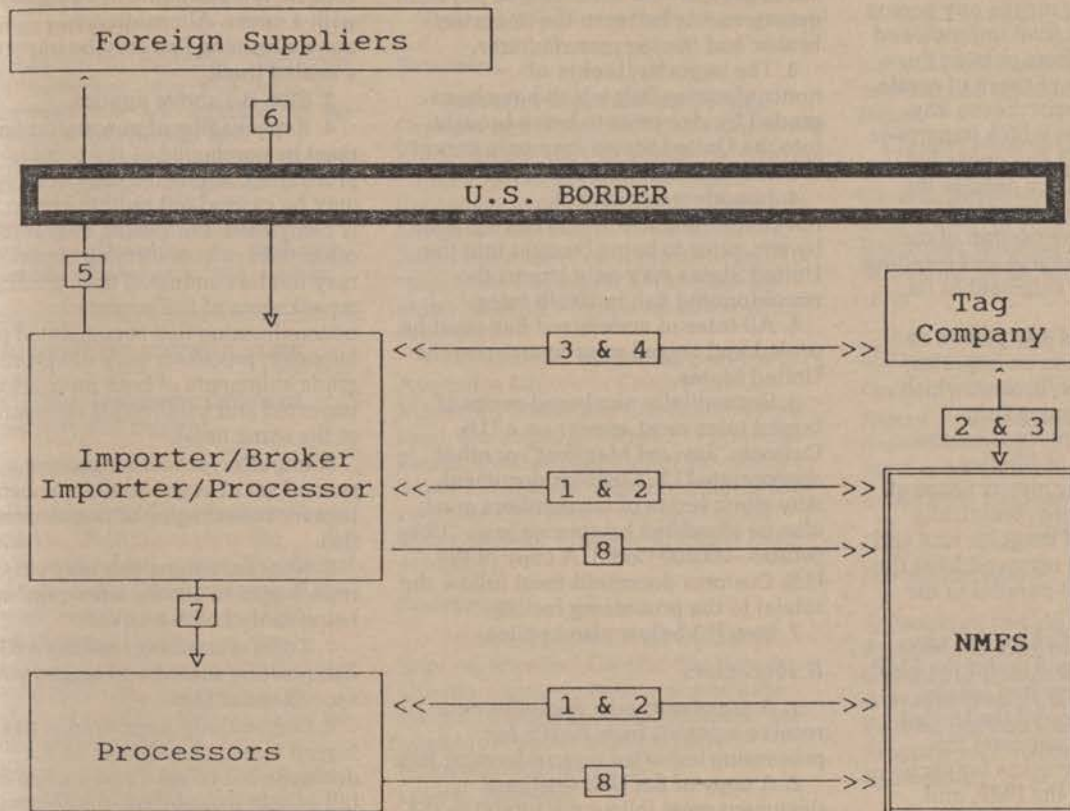
As a result of the comments received at the public hearing, the Council voted to reject the proposed certification program and, by letter of May 25, 1988, informed the Secretary of the Council's desire that the program not be implemented.

The Secretary has determined that a full record of comment is necessary before determining whether to go forward with a proposed rule, and that NOAA should issue this ANPR to solicit comments from those parties unable to attend the previous public hearing or who have not yet commented on the program. After the close of this comment period, a determination will be made on whether to proceed with a proposed rule to implement a certification program. Comments are requested on the need for such a program and on the actual measures of the program, as outlined below, with emphasis on implementation, anticipated burden of the measures on both the participants and the government, and enforceability.

BILLING CODE 3510-08-M



## Certification Program Flow Chart

**CERTIFICATION PROGRAM FLOW CHART**

1. Permit application to NMFS under appropriate category.
2. NMFS issues permit to applicant with duplicate to tag manufacturing company.
3. Tag manufacturer assigns tag series numbers to permittee and notifies NMFS of number series.
4. Tag manufacturer issues tags to permittee upon payment.
5. Permittees forward sequentially numbered tags to foreign suppliers.
6. Sequentially numbered tags must seal appropriate containers holding nonconforming fish, and number series must be noted on appropriate U.S. Customs document prior to entering U.S.
7. Importer/Broker ships sealed totes to processor with copy of Customs document. Importer/Processor repackages nonconforming fish in 100 lb. totes, reseals totes with new tags and ships to processor with copy of NMFS Importer/Processor Report.
8. Required bi-weekly reporting to NMFS.



# Certification Program for Imported Nonconforming Groundfish

## Definitions

1. *Importer/broker* means any person or corporation, other than unprocessed nonconforming fish from outside the United States for the purpose of resale.

2. *Importer/processor* means any person or corporation which imports or receives unprocessed and ungraded nonconforming fish from outside the United States for the purpose of processing all or some portion of the shipment and repackaging and reselling the remainder of the shipment in its unprocessed form.

3. *Processor* means any person or corporation, other than an importer/processor or importer/broker, which processes nonconforming fish.

4. *Processed or to process* means fillets or the process of filleting.

5. *Fillets or filleting* means slices of, or the process of slicing, practically boneless fish flesh of irregular size and shape, which are (is) removed from the carcass by cuts made parallel to the backbone.

6. *Nonconforming fish* means any species of fish managed under the FMP which have been harvested legally outside the jurisdiction of the United States, but which do not meet the minimum size requirements for such species of fish under the FMP, and which have not been processed.

7. *Point of processing* means that part of a facility at which the fish is placed into a washer, onto a cutting table, into a cutting machine or onto the cutting floor. Storage coolers or any other part of the facility are not considered the point of processing for purposes of breaking a seal.

8. *Tote* means a container of 100-, 150-, or 1,000-lb capacity designed for the packaging and transport of fish or other perishable products and which is capable of being sealed, and resealed if inspection is necessary.

## Requirements

### A. Importer/broker

1. Importer/brokers must apply for and receive a permit from NMFS for importation of nonconforming fish.

2. Importer/broker tag requirements, as specified in the application, will be forwarded to the tag manufacturer of NMFS. The tag manufacturer will assign

sequential tag series to the importer/broker and inform NMFS. Tags will be issued by the manufacturer directly to the importer/broker according to payment arrangements between the importer/broker and the tag manufacturer.

3. The importer/broker of nonconforming fish which have been graded by size prior to being brought into the United States may only import the nonconforming fish in 100-lb totes.

4. Importers/brokers of nonconforming fish which have graded by size prior to being brought into the United States may only import the nonconforming fish in 100-lb totes.

5. All totes of undersized fish must be sealed and tagged prior to entering the United States.

6. Sequentially numbered series of tagged totes must appear on a U.S. Customs "Inward Manifest" or other appropriate U.S. Customs document. Any given series of tag numbers must also be identified by species (e.g., "totes 000100—000200 Cod"). A copy of the U.S. Customs document must follow the tote(s) to the processing facility.

7. Step B.3 below also applies.

### B. Processors

1. A processor must apply for and receive a permit from NMFS for processing imported nonconforming fish.

2. A copy of the U.S. Customs document must follow the tote(s) to the processing facility.

3. The seal must stay intact until the tote reaches the point of processing.

4. At the point of processing, the tag must be removed from the tote.

5. A processor must report to NMFS, on a bi-weekly basis, the following information:

a. Date of receipt of nonconforming fish.

b. Point of origin, in a foreign country, of the original shipment.

c. Amount of nonconforming fish received (pounds and totes), by species.

d. Sequentially numbered series of associated tags by species (e.g., "totes 000100—000200 Cod").

e. Amount of nonconforming fish processed (pounds and totes), by species.

### C. Importer/processor

1. Steps A.1, A.2, and A.3 above apply.

2. An importer/processor of nonconforming fish which have not been

graded by size prior to being brought into the United States may only import the nonconforming fish in 100-, 500-, or 1000-lb. totes capable of being sealed with a cover. Alternatively, nonconforming fish may be imported in a sealed truck.

3. Step B.3 above applies.

4. Repackaging of nonconforming fish must be conducted at the point of processing, and is the only activity that may be carried out until the repackaging is completed. Processing or grading of other than nonconforming imported fish may not be conducted until grading and repackaging of the imported nonconforming fish is completed (i.e., an importer/processor may not process and grade shipments of both nonconforming imported and conforming domestic fish at the same time).

5. Importer/processor receive a second set of sequentially numbered tags for repackaging of nonconforming fish.

6. Nonconforming fish may only be repackaged in 100-lb. totes capable of being sealed with a cover.

7. Totes containing nonconforming fish must be sealed and tagged with a second set of tags.

8. Sequentially numbered series of tagged totes must appear on the domestic bill of sale, and a copy of the bill of sale must follow the shipment to the processing facility.

9. An importer/processor must report to NMFS, on a bi-weekly basis, the following information:

a. Amount of ungraded fish received (pounds and totes), by species.

b. Amount of nonconforming fish repackaged (pounds and totes), by species.

c. Destination (buyer) of repackaged fish, amount bought (totes), by species, sequentially numbered series of associated tags and date of redistribution.

d. Amount of nonconforming fish not repackaged, but processed, by species.

e. Point of origin, in a foreign country, of the original shipment.

Dated: September 9, 1988.

James W. Brennan,

Assistant Administrator For Fisheries,  
National Marine Fisheries Service.

[FR Doc. 88-20946 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-08-M



# Notices

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

September 9, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

### Extension

• Agricultural Marketing Service, Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas—Marketing Order 906, Committee forms used: Recordkeeping, On occasion, Annually Farms, Businesses or other for-profit, Small businesses or organizations; 710 responses; 168 hours; not applicable under 3504(h); Virginia M. Olson (202) 447-5057.

• Agricultural Marketing Service, Avocados Grown in South Florida—Marketing Order 915 Committee forms used: On occasion, Weekly, Annually, Farms, Businesses or other for-profit, Small businesses or organizations; 530 responses; 64 hours; not applicable under 3504(h); Virginia M. Olson (202) 447-5057.

### Emergency

• National Agricultural Statistics Service, Forward Contracting Survey, One-time survey, Businesses or other for-profit; 345 responses; 86 hours; not applicable under 3504(h); Larry Gambrell (202) 447-7737.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-20941 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-01-M

### Office of the Secretary

#### National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board

Date: October 27-28, 1988

Time: 8:30 a.m.-5 p.m., October 27; 8:30 a.m.-Noon, October 28

Place: Room 104-A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related

national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344-1560.

Done at Beltsville, Maryland, this 15th day of August 1988.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 88-20888 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-03-M

### Forest Service

#### A Proposal to Drill the Ruby A-2 Federal Exploratory Oil and Gas Well, Beartooth Ranger District, Administered by the Custer National Forest, Carbon County, MT; Intent To Prepare an Environmental Impact Statement

The USDA, Forest Service, as lead agency, and the USDI, Bureau of Land Management will cooperatively participate in the preparation of an Environmental Impact Statement to disclose the environmental effects of a proposed oil and gas exploratory well (Ruby A-2 Federal) in Ruby Draw east of the Line Creek Plateau of the Beartooth Ranger District, Custer National Forest.

Phillips Petroleum Company submitted an application for Permit to Drill (APD) on August 1, 1988, for the Ruby A-2 Federal oil and gas well on Federal Oil and Gas Lease M-60558. The proposed drill site is located within Management Area C as established in the Custer National Forest Plan. The well has a proposed depth of 11,600 feet.

Federal, State, and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process.

The Beartooth District Ranger held formal public meetings at Red Lodge and in Billings, Montana regarding Ruby A—a proposed drill site one mile west of Ruby A-2, and as a result of public input, Phillips revised their drill location.



On August 12, 1988, a public information meeting was held in Red Lodge, Montana. The purpose of this meeting was to determine the scope of the issues to be addressed and for identifying the significant issues related to this proposed action early in the analysis process. Input from this meeting is still applicable to the current proposal. Additional input will be sought (1) by mail from those who responded during the scoping period for Ruby A, and (2) through notices in the local newspapers. No additional public meetings are planned.

John P. Inman, Acting Forest Supervisor, P.O. Box 2556, Billings, MT 59103, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to the District Ranger, Beartooth Ranger District, Route 2, Box 3420, Red Lodge, MT 59068.

Questions about the proposed action and the Environmental Impact Statement should be directed toward Phil Jaquith, District Ranger, Beartooth Ranger District, Phone 406-446-2103.

The public comment period for scoping to identify issues will end October 1, 1988. Please ensure your comments are received in written form by the above date.

Date: September 2, 1988.

John P. Inman,

Acting Forest Supervisor.

[FR Doc. 88-20932 Filed 9-13-88; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a subcommittee meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on October 4, 1988, at the Professional Building, Room 215, 1036 Quarrier St., Charleston, WV 25301. The purpose of the meeting is to study the feasibility of holding a state-wide conference on "Civil Rights Legislation in West Virginia" in preparation for making a proposal to the full Committee on November 15, 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adam R. Kelly, 304/652-4141 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523-5264 or TDD 202/376-8117. Hearing impaired persons

who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 31, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-20928 Filed 9-13-88; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Deep Seabed Mining; Approval of Exploration License Revision for Ocean Minerals Co.

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of approval of deep seabed hard mineral resources exploration license revision for Ocean Minerals Company.

**SUMMARY:** On May 19, 1988, at 53 FR 17966, the National Oceanic and Atmospheric Administration (NOAA), noticed receipt of a proposal from Ocean Minerals Company (OMCO), 3385 Scott Boulevard, Santa Clara, California 95051, to modify the exploration plan incorporated into Deep Seabed Hard Mineral Resources Exploration License USA-1, as revised, which was issued to OMCO on August 29, 1984. No comments were received objecting to approval of this license revision. Pursuant to the Deep Seabed Hard Mineral Resources Act, (Pub. L. 96-283) and 15 CFR Part 970, on September 8, 1988, NOAA approved Revision No. 3 to USA-1, as proposed by the licensee.

#### FOR FURTHER INFORMATION CONTACT:

John W. Padan, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235, (202) 673-5117.

Dated: September 8, 1988.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-20921 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-12-M

### Marine Mammals; Application for Permit; Point Reyes Bird Observatory (P132C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, California 94970.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Up to 9,250 northern elephant seals (*Mirounga agustirostris*) will be marked and/or tagged. Of the preceding 40 will be radio-tagged over a 2-year period. Up to 375 harbor seals (*Phoca vitulina*) will be captured, tagged and/or radio-tagged. An unspecified number of prematurely born Steller sea lion pups (*Eumetopias jubatus*) will be collected. Incidental harassment of California sea lions (*Zalophus californianus*), harbor seals and steller sea lions may result from research activities.

4. *Location of Activity:* California, Farallon Islands and Point Reyes.

5. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and



Director, Southwest Region, National Marine Fisheries Service, 300 South Perry Street, Terminal Island, California 90731-7415.

Date: August 25, 1988.

Nancy Foster,  
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-20920 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,  
Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

### Department of Agriculture

SN 7-025,749—Method & Apparatus for Nondestructively Determining the Density of a Plurality of Contiguous Segments of a Nonhomogeneous Specimen

SN 7-049,251—Variable Eccentricity Mass for Mechanical Shakers

SN 7-159,990—Separation of Cyclodextrins by Affinity Chromatography

SN 7-188,993—Control of Insects by Roseotoxin B

SN 7-189,079—Formulated Milk Concentrate and Beverage

SN 7-189,093—Enzymatic Production of Maltotetraose-Rich Compositions

SN 7-192,083—Heat-Stable, Salt-Tolerant Microbial Xanthanase & Method of Producing Same

SN 7-192,084—Method for Producing Trichothecenes

SN 7-192,085—Naphthoquinone

Antibiotics for *Fusarium solani*

SN 7-207,589—Kojic Acid and Esters as Insecticide Synergists

SN 7-212,390—Process and Apparatus for Direct Ultrasonic Mixing Prior to Analysis

### Department of Health and Human Services

SN 6-849,059—Cell Line Producing AIDS Viral Antigens Without Producing Infectious Virus Particles

SN 6-895,463—Testing for the Human B Lymphotropic Virus (HBLV)

SN 6-895,857—Molecular Cloning & Clones of Human B Lymphotropic Virus (HBLV)

SN 6-901,602—Human B Lymphotropic Virus (HBLV)

SN 7-052,209—Angle Rotor Coil Planet Centrifuge for Countercurrent Chromatography & Particle Separation

SN 7-186,260—Method for Treating Acne

SN 7-188,918—Gene for Encoding a Human Malaria Vaccine Antigen

SN 7-211,973—Reproducible Generation of High Yields of Hepatitis A Virus by Cell Culture

SN 7-281,276—Cell Lines for Overexpressing the Human PDGF-A Gene Product and Method Therefor

SN 7-281,304—Synthetic HIV Protease Gene & Method for its Expression

SN 7-226,445—Carbohydrate Receptor for Bacteria and Method for Use Thereof

SN E-105-87—Flexible Hodler for a Cystoscope or the like

SN E-116-88—Device for Rotary-Seal-Free Flow-Through Coil Planet Centrifuge Equipped with Multiple Column Holders Connected in Series

SN E-117-88—Method and Device for Improved Use of Heart/Lung Machine

SN E-201-88—Irreversible Inhibitors of Adenosine Receptors

### Department of the Air Force

SN 6-469,372—Radiation Hardening of Mosfet Devices

SN 7-197,935—Rotating Doppler Frequency Shifter

### Department of the Army

SN 7-096,993—Infinitely Variable Ratio Transmission

SN 7-182,603—Universal Automatic Landing System for Remote Piloted Vehicles

SN 7-188,933—Asynchronous Marx Generator Utilizing Photo-Conductive Semiconductor Switches

SN 7-196,708—Improved Alkaline Earth-Oxyhalide Electrochemical Cell for Low Temperature Use

SN 7-199,500—Uniform High-Field Permanent-Magnet Structures

SN 7-199,501—High-Field Permanent-Magnet Structures

SN 7-199,504—High-Field Permanent-Magnet Structures

SN 7-199,819—Harmonically Pumped Monolithic Planar Doped Barrier Mixer

SN 7-204,327—Method of Making a Cathode from Tungsten & Iridium Powders Using a Barium Peroxide Containing Material as the Impregnant

SN 7-210,687—Clad Magic Ring Wrigglers

SN 7-213,031—Separator For Lithium Batteries & Lithium Batteries Including the Separator

SN 7-213,970—Periodic Permanent Magnet Structures

SN 7-215,094—Method of Manufacturing of a Magic Ring

SN 7-215,138—Saw Circuit for Generating Continuous Time-Coherent RF Carriers

SN 7-215,664—Lithium Electrochemical Cell Containing Diethylcarbonate as an Electrolyte Solvent Additive

[FR Doc. 88-20922 Filed 9-13-88; 8:45 am]

BILLING CODE 3510-04-M

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Amendments Relating to Stock Index Contracts; Chicago Board of Trade, et al.

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Kansas City Board of Trade ("KCBT") and New York Futures Exchange ("NYFE") have submitted for those exchanges' stock index futures and option contracts proposed rule amendments relating to daily price limit and trading halt provisions. The proposed limits and trading halts would be activated following major movements in stock prices. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commodity Futures Trading Commission ("Commission") Regulation 140.96, the Director of the Division Economic Analysis, on behalf of the Commission, has determined that the proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.



**DATE:** Comments must be received on or before October 14, 1988.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the daily price limit and trading halt amendments to the stock index futures and option contracts.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** The Interim Report of the Working Group on Financial Markets dated May 1988 recommended that coordinated trading halts and reopenings be adopted by all domestic markets for equity and equity-related products as a means of dealing with large, rapid market declines that threaten to create panic conditions.<sup>1</sup> In broad outline, the Working Group recommended that all U.S. markets for equity and equity-related products halt trading for one hour if the Dow Jones Industrial Average (DJIA) declines 250 points from its previous day's closing level. Under the Working Group's recommendations, a second closing, this time for two hours, and reopening would occur if the DJIA declines 400 points below its previous day's closing level.

The daily price limit and trading halt proposals submitted by the CBT, CME, KCBT and NYFE are in direct response to the recommendations of the Working Group. The contract markets for which proposals have been submitted are as follows:

Exchange	Markets
CME .....	Standard & Poors 500 (S&P 500) Future and the Option Thereon.
CBT .....	Major Market Index (Maxi) Future.
	CBOE 50 Future.
	CBOE 250 Future.
KCBT .....	Value Line Average Future.
	Mini Value Line Average Future.

<sup>1</sup> On March 18, 1988, the Working Group on Financial Markets was established by Executive Order to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the stock market break in October of 1987. The Working Group was charged with developing effective mechanisms to enhance investor confidence, to protect the quality and fairness of markets for all participants, and to preserve the continued orderliness, integrity, competitiveness, and efficiency of our nation's financial markets.

#### Exchange

NYFE..... NYFE Composite Future and the Option Thereon.  
 Russell 1,000 Future.  
 Russell 2,000 Future.  
 Russell 3,000 Future.

#### Markets

The proposals would establish provisions for suspending futures and/or option trading for one hour if there is a 250-point decline in the DJIA relative to the prior day's closing value or if there is a decline of corresponding magnitude in the index underlying the specific stock index futures contract. Further, there would be a two-hour suspension of trading if there is a 400-point decline in the DJIA or a decline of corresponding magnitude in the index underlying the specific futures contract. Unlike the 250 DJIA point limit which applies only to price declines, this broader 400-point limit (or its corresponding value) also applies to price increases. The proposals include specific provisions for reopening trading after a trading halt is put into effect. The exchanges have proposed that the proposals be made effective for existing as well as newly listed contracts.

The New York Stock Exchange has submitted to the Securities and Exchange Commission (SEC) a proposed rule change to adopt similar trading halts in stocks trading on that exchange. Notice of that proposal is being published in the *Federal Register* by the SEC with a request for comment by interested persons.

The Division's preliminary review of these proposals indicates that they are essentially similar and responsive to the suggestions of the Working Group for "coordinated trading halts." In the case of three of the four proposals, the amended rules would replace existing daily price limits on futures contracts that currently act as "circuit breakers" but which are not necessarily coordinated with the rules for other derivative markets and the underlying market.

In this regard, however, there are some differences among the various proposals. For example, certain aspects of the various proposals are stated in terms of fluctuations in the index underlying the specific futures contract, rather than strictly in terms of the DJIA. In addition, the CME has proposed an initial price decline limit of 12 S&P 500 index points which would apply for thirty minutes. This would precede the CME's proposed 30-point price decline limit which corresponds to the Working Group's suggested 250 DJIA point limit. Similarly, the NYFE has proposed initial price decline limits which would be

effective for a thirty-minute period and which would be narrower than the limit of 250 DJIA index points. As with the 250 DJIA point limit (or its equivalent in terms of other indices), these narrower initial limits would apply only to price declines.

Copies of each of the exchanges' proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the exchanges' proposed daily price limit and trading halt rules can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The materials submitted by the exchanges in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on September 12, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-20969 Filed 9-13-88; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Wednesday and Thursday, 5 and 6 October 1988.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.



**FOR FURTHER INFORMATION CONTACT:** Harold Summer, Aged Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,  
Alternate, OSD Federal Register Liaison  
Officer, Department of Defense.  
September 8, 1988.

FR Doc. 88-20917 Filed 9-13-88; 8:45 am]

BILLING CODE 3810-01-M

## Corps of Engineers, Department of the Army

[3710-AV78305540GJLA TJ]

**Intent To Rescind the April 16, 1987, Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Fort Toulouse National Historic Landmark and Taskigi Indian Mound, Alabama River, in Elmore County, AL**

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Rescission of notice of intent.

**SUMMARY:** An Environmental Assessment was prepared to perform bank stabilization measures to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound. A Finding of No Significant Impact was signed by the Mobile District Engineer on August 5, 1988. Therefore, the Notice of Intent to prepare an EIS is rescinded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Peck, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628-0001, Phone: (205) 690-2750.

### 1. Proposed Action

To perform bank stabilization measures to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound. Protection is authorized by the Water Resources Development Act (WRDA) of 1986 (Pub. L. 99-662). A General Design Memorandum containing an Environmental Assessment was circulated for a 30-day review on May 6, 1988. The recommended plan consists of placing 1,140 feet of stone revetment along the left bank of the river from above the reconstructed fort to the Indian mound; 720 feet of free standing stone dike from the Indian mound downstream; and 1,860 feet of overbank levee constructed along the top edge of the river bank to control sloughing caused by overland flows cascading over the edge. Following construction along the river bank, all graded and scarred areas would be planted with vegetation compatible with the floodplain environment and resistant to erosion. Any other areas disturbed during construction will be seeded, mulched, and/or sodded.

### 2. Alternatives

Alternatives to the proposed action which were considered include the following:

- No action.
- Sheet pile retaining wall at the foot of the bank without restraining tie back anchors.
- Sheet pile retaining wall at the foot of the bank with tie back anchors.
- Sheet pile retaining wall at the top of the bank with top anchors.
- Placement of coffercells.
- Excavate a 7,000-foot long cutoff which would isolate the unstable bank in the bend of the river and construct a blockage structure in the natural river.
- Excavate a 4,500-foot long cutoff within the inside of the river bend opposite the unstable bank and construct a blockage structure in the natural river (authorized plan as per the WRDA of 1986).
- Excavate a 2,500-foot reach 200 feet wide along the river bank opposite the unstable bank and install riprap revetment.

### 3. Scoping Process

a. The scoping process, as outlined by the Council on Environmental Quality in November 29, 1978, **Federal Register**, National Environmental Policy Act of

1969 Regulations, was utilized to involve Federal, State, local agencies, and other interested persons.

b. The identification of engineering, environmental, and economic issues were addressed in the Environmental Assessment, indicating that an EIS was not required for the recommended plan. The views and concerns of agencies and individuals were solicited through circulation of the General Design Memorandum and Draft Environmental Assessment for a 30-day period which ended on June 13, 1988.

c. The proposed action was coordinated with the Alabama Department of Environmental Management, Alabama Department of Conservation and Natural Resources, the Alabama State Historic Preservation Officer, the Advisory Council on Historic Preservation, Environmental Protection Agency, and the U.S. Fish and Wildlife Service as required under the Fish and Wildlife Coordination Act.

d. Based on the information contained in the General Design Memorandum, the Environmental Assessment and the results of coordination of the recommended plan, a Finding of No Significant Impact was signed by the Mobile District Engineer on August 5, 1988.

Date: August 31, 1988.

Larry S. Bonine,  
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-20919 Filed 9-13-88; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Procurement and Assistant Management Directorate; Intention To Make a Non-Competitive Financial Assistance Award

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of intent to make a non-competitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE) plans to award a one-year, noncompetitive grant to the Rochester Institute of Technology (RIT), Rochester, New York. Conference Report No. 100-498 which accompanied Pub. L. 100-102, Fiscal Year 1988 Energy and Water Development Appropriation Act contained the following statement:

The conferees direct the Department to allocate \$800,000 of Research and Development funding to the Rochester Institute of Technology (RIT) for micro-electronic research that will contribute to improved capability for DOE atomic energy



defense programs and assist in developing advanced technological approaches to manufacturing microelectronic circuits.

Additionally, the Acting Assistant Secretary for Defense Programs on August 5, 1988, determined that the project proposed by RIT is in the public interest because it will contribute to meeting the national need for improved processes and technologies in microelectronic manufacturing. Accordingly, noncompetitive award of this grant will be made pursuant to 10 CFR 600.7(b)(2)(i)(G).

Procurement Request Number—01-88DP20153.000

Authority: Department of Energy Organization Act, Pub. L. 95-91 and the Atomic Energy Act of 1954, as amended.

**FOR FURTHER INFORMATION CONTACT:** Valerie L. Pastore, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Ave. SW., Washington, DC 20585.

Issued in Washington, DC, on September 7, 1988.

Edward T. Lovett,

Director, Contract Operations Division "A",  
Office of Procurement Operations.

[FR Doc. 88-20959 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

## Bonneville Power Administration

### Intention To Prepare a Draft Environmental Impact Statement for a Long-Range Planning Project in the Eugene-Springfield Area, Oregon

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of intent to prepare and consider a draft environmental impact statement (DEIS).

**SUMMARY:** To maintain a reliable electric power system as the area grows, additional high-voltage facilities will be needed in the Eugene-Springfield area during the next 20 years. BPA has identified those needs in a Technical Report and gained local governmental acceptance of those needs. BPA, in cooperation with the local governments, proposes to analyze feasible transmission line routing and substation site alternatives in an EIS, contact landowners, and identify a centerline (the most likely location of the line). It is intended that the centerline(s) will be indicated on local comprehensive plan maps and the local governments will develop ordinances to protect the right-of-way from other development until it is needed by BPA. No construction is planned at this time.

**DATES:** BPA welcomes written

comments on the scope and emphasis of the DEIS. Written comments will be accepted through October 4, 1988.

The DEIS is scheduled to be circulated for public review and comment in January, 1989. Public meetings will be held after release of the DEIS. The meetings will be widely publicized by general announcement as well as by written invitation to all interested parties.

**ADDRESSES:** Send letters of comment and questions on the scope and content of the DEIS to Mr. Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621-AJ, Portland, Oregon 97208.

**FOR FURTHER INFORMATION CONTACT:** To have your name placed on the mailing list for this project and to receive copies of a newsletter and other information, write or call Mr. John Replinger, Lane Council of Governments, North Plaza Level-PSB, 125 E. Eighth Ave., Eugene, OR 97401, telephone 503-687-4429.

For additional information, contact BPA's Public Involvement Office at 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside Portland; 800-547-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California.

**SUPPLEMENTARY INFORMATION:** Based on long-range load forecasts, BPA has concluded that two projects may be needed within the next 20 years in the Eugene-Springfield area.

1. North Eugene-Springfield Reinforcement: additional service to the Eugene Water & Electric Board (EWEB), Springfield Utility Board (SUB), and Emerald People's Utility District (EPUD) for a new substation probably in the Gateway area and for 4-6 miles of transmission lines to connect into BPA's existing 230-kV or 500-kV lines. At least three transmission alternatives are possible, each using or paralleling existing transmission right-of-way.

a. One would connect into BPA's Lane-Marion 500-kV line near Coburg and parallel PP&L's Spencer-Diamond Hill line south to the Gateway area.

b. One would tap BPA's Santiam-Alvey 230-kV line northeast of Springfield, and parallel the Cougar-Willakenzie line to the Gateway area.

c. Another would connect into the Alvey Substation, south of Eugene, at the 230-kV level, and parallel PP&L's Spencer-Diamond Hill line north to the Gateway area.

The Springfield Utility Board needs a substation for distribution in the same general area as the North Eugene-Springfield reinforcement project. Within the next few years, EWEB and

EPUD may also need facilities in the same general area. Since environmental impacts and cost reductions are possible with a shared site, BPA will work closely with the local utilities to select a site that also accommodates their needs, if possible. It is hoped that a shared site will be identified as part of this project.

2. South Eugene Reinforcement: a 500-kV transmission line connecting the Alvey and Lane Substations, a distance of about 14 miles. Four alternatives will be considered, each requiring some new right-of-way. One would use existing transmission corridors, a practice which reduces costs and environmental impacts. Three would use new corridors for several miles in an attempt to avoid the populated section of the existing corridor.

Some scoping of the issues occurred during earlier phases of the project. The main environmental issues identified were visual and electric-magnetic field effects. The potential for health effects remains a subject of controversy for utilities throughout the country.

Issued in Portland, Oregon, September 2, 1988.

Steven G. Hickok,

Executive Assistant Administrator.

[FR Doc. 88-20960 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

### Availability of the Record of Decision To Operate the DC Terminal Expansion Project

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Availability of Record of Decision.

**SUMMARY:** The Bonneville Power Administration (BPA) has decided to operate, in accordance with its Long-Term Intertie Access Policy and BPA's marketing programs, the DC Terminal Expansion Project (Project) at up to full capacity upon its completion.

The Project will increase the capacity of the DC Intertie from about 20000 megawatts (MW) to about 3100 MW through the addition of new converter equipment at both the California and Oregon terminals of the Intertie and through other construction activities.

**SUPPLEMENTARY INFORMATION:** The environmental impacts of construction and maintenance of the Project, and the physical impacts of operation of the Project itself, such as noise and electrical effects, have been determined to be insignificant and were addressed in an Environmental Assessment, a Supplemental Environmental



Assessment, and a Finding of No Significant Impact.

BPA had initially made a decision to construct and operate the Project on August 29, 1986. However, petitions for review of this decision were filed in the Ninth Circuit Court of Appeals by the State of Idaho and the National Wildlife Federation on November 26, 1986. They contended that BPA had inadequately assessed the impacts on anadromous fish of operating resources to send additional power over the expanded Intertie, and had incorrectly separated this decision from other related and ongoing considerations. They further contended that an Environmental Impact Statement (EIS) was required.

On August 4, 1987, BPA modified its earlier decision by determining not to operate the Project pending findings of the Intertie Development and Use (IDU) Final EIS which addressed the issues raised in Court. The IDU Final EIS was issued in April 1988. A decision to implement the Long-Term Intertie Access Policy, also addressed in the EIS, was made on May 17, 1988. On May 24, 1988, with Ninth Circuit Court of Appeals, in response to a motion joined in by all parties, dismissed the petitions by the State of Idaho and the National Wildlife Federation.

The EIS showed little environmental reason not to proceed with operating the Project considering the planned installation of fish bypass facilities on dams by the U.S. Army Corps of Engineers and the Mid-Columbia Public Utility Districts. Besides environmental factors and issues, BPA took into account economic and operational factors in making its decision to operate the Project.

#### FOR FURTHER INFORMATION CONTACT:

To request a copy of the Administrator's Record of Decision, please call one of BPA's toll-free document request lines: 800-841-5867 for Oregon or 800-624-9495 for other Western states.

For additional information, please contact Mr. Anthony R. Morrell, Assistant to the Administrator for Environment, at 503-230-5136, or call the Public Involvement office in Portland at 503-230-3478, toll-free 800-452-8429 from Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh

Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59807, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

Issued in Portland, Oregon, on August 31, 1988.

Jack Robertson,  
Acting Administrator.

[FR Doc. 88-20873 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

### Coal Policy Committee, National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Coal Policy Committee of the National Coal Council.

*Date and Time:* Tuesday, October 4, 1988, 1:30 p.m.

*Place:* Four Seasons Clift Hotel, 495 Geary Street, San Francisco, CA.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

*Purpose of the Meeting:* Discuss studies currently being conducted by the Council.

*Tentative Agenda:*

—Call to order by Irving Leibson, Chairman.

—Review and discuss the three draft studies currently underway ("Innovative Clean Coal Technology Deployment,"

"Use of Coal in Non-Utility Applications," and "The Impact of Substituting U.S. Coal for Imported Energy.")

—Discussion of any other business properly brought before the Committee.

—Adjournment.

*Public Participation:* The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcripts:* Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-20874 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

### Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

*Name:* Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation, National Petroleum Council.

*Date and Time:* Monday, September 26, 1988, 1:00 p.m. Tuesday, September 27, 1988, 8:00 a.m.

*Place:* Hyatt Regency, Room 226, International Parkway, Dallas/Fort Worth Airport, Texas.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

*Purpose of the Meeting:* Discuss pipeline survey and mapping.

*Tentative Agenda:*



—Opening remarks by Chairman and Government Cochairman.

—Discuss the pipeline survey and mapping.

—Review draft volume.

—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

**Public Participation:** The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW.,

Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 88-20875 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

### Economic Regulatory Administration

[Docket No. ERA C&E 88-19; Certification Notice-24]

#### Filing of Certification of Compliance; Coal Capability of New Electric Powerplants; Indech Energy Services of Oswego, Inc. et al

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 et seq.), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or

another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:** The following companies have filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Indech Energy Services of Oswego, Inc., Wheeling, IL.....	8-25-88	Cogen combined cycle.....	53.4	Oswego, NY.
O.L.S. Energy-Agnews, San Francisco, CA.....	8-25-88	.....do.....	29	San Jose, CA.
Dynamis Inc., Cupertino, CA.....	8-24-88	Cogen topping cycle.....	26.4	Sanger, CA.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on September 7, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs,  
Economic Regulatory Administration.

[FR Doc. 88-20961 Filed 9-13-88; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket Nos. QF87-615-002, et al.]

#### Encogen One Partners Ltd., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 9, 1988.

Take notice that the following filings have been made with the Commission:

#### 1. Encogen One Partners Ltd.

[Docket No. QF87-615-002]

On August 17, 1988, Encogen One Partners Ltd. (Applicant), of 10375 Richmond Avenue, Houston, Texas 77042, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located near Sweetwater, Texas. The facility will consist of three combustion turbine generating units, three heat recovery steam generators and an extraction/condensing steam turbine generating unit. Heat recovered from the facility will be sold to the United States Gypsum Company for use in an industrial process for drying gypsum slurry in gypsum board drying kilns and for space heating. The net electric power production capacity of the facility will be 257 MW. The primary energy source will be natural gas.

The original application was filed on August 21, 1987, and granted on October 29, 1987 (41 FERC ¶ 62,097). The first recertification reflecting a change in ownership of the facility was filed on January 29, 1988 and granted on February 16, 1988. The instant recertification is requested due to further changes to the partnership agreement which will modify the sharing of cash and tax benefits. Applicants states that utility ownership and all information remains the same as that described in the January 29, 1988 application.

**Comment date:** Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

#### 2. M&M/Mars, Inc.

[Docket No. QF86-776-001]

On August 18, 1988, M&M/Mars, Inc. (Applicant), of Hackettstown, New Jersey, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the



Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hackettstown, New Jersey. The facility will consist of a combustion turbine generating unit and a waste heat recovery steam generator equipped with supplementary firing duct burner. Thermal energy recovered from the facility will be used for processing candy, hot water for domestic uses, air conditioning and space heating. The electric power production capacity of the facility will be approximately 8.827 MW. The primary energy source will be natural gas. Installation of the facility is expected to begin in the third quarter of 1988.

The original application filed by M&M/Mars, Inc. was granted on April 27, 1987 as a 1.08 MW qualifying Cogeneration facility (39 FERC ¶ 62,089). The facility consisted of natural gas-fired boilers and a non-condensing steam turbine generator. The recertification is requested due to change in configuration of the facility, which consists of adding the above described new facility to an existing topping turbine, increasing the total maximum electric power production capacity of the facility to 9.9 MW.

*Comment date:* Thirty days from publication in the *Federal Register* in accordance with Standard Paragraph E at the end of this notice.

### 3. Ultrasystems Development Corporation

[Docket No. QF88-486-000]

On August 19, 1988 Ultrasystems Development Corporation (Applicant), of 12500 Fair Lakes Circle, Suite 260, Fairfax, Virginia 22033, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in South Amboy, New Jersey. The facility will consist of two circulating fluidized-bed boilers and an extraction/condensing steam turbine generator. Process steam produced by the facility will displace steam requirements at the Thermal Resources, Incorporated Facility for heating water for use in an agriculture facility. The net electric power production capacity of the facility will be 96.8 MW. The primary energy source will be coal. Installation of the facility is scheduled to begin in early 1991.

*Comment date:* Thirty days from publication in the *Federal Register*, in

accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20950; Filed 9-13-88; 8:45 am]

BILLING CODE 6717-01-M

### Addendum to Revised Emergency Action Plan Guidelines Issued February 22, 1988

September 9, 1988.

Pursuant to the authority in § 12.22(a) (1) of the Commission's Regulations, the Director, Office of Hydropower Licensing, revised the guidelines for the preparation of emergency action plans (EAP) on February 22, 1988. An addendum has been prepared to clarify and enhance sections of the guidelines and to correct typographical errors in the guidelines.

Copies of the addendum are available from the Director, Division of Dam Safety and Inspections or the Regional Director.

The purpose of this Addendum is to clarify and to make typographical corrections to the EAP Guidelines.

*Page 1, Item 1, First Paragraph, lines 4-6.* The definition of emergency is revised to read as follows: "An emergency is defined as an impending or actual sudden release of water caused by an accident to, or failure of, a dam or other water retaining structure."

*Page 1, Item 1, Second Paragraph, line 1.* "Applicant" should be changed to "applicant for license". (Throughout guidelines all references to applicant refer to applicant for license).

*Page 1, Bottom of Page.* The following sentence is added as a footnote to the bottom of page 1: "Throughout the guidelines, the word 'dam' henceforth

refers to a dam or other water retaining structure".

*Page 2, Item 3.* This item states that a need exists for a periodic reprinting and redistribution of the complete EAP. The licensee/exemptee/applicant for license has the option to place Appendix B (page 17-19) of the guidelines (Summary of Study and Analyses to Determine Extent of Inundation) in a separate volume which only has to be provided to the Commission. This volume would need to be reprinted only when analyses are redone. All other sections of the EAP must be reprinted at least every five years.

*Page 3, Item 4, Paragraph a through i.* The referenced item number in each of these paragraphs is deleted and replaced with the word "see".

*Page 3, Item 4, Paragraphs e and f.* It is not expected that new dam break analyses be performed unless the current analyses are inadequate. However, inundation maps must comply with the criteria in Appendix C (page 19-21) of the guidelines.

*Page 3, Item 4, Paragraph C and Page 4, Item 5, line 13.* The phrase "three-ring binder" is revised to read "loose-leaf binder". All updated pages must contain pre-punched holes so that updates can easily be inserted into the binder.

*Page 6.* The verification form is to be completed only by the licensee, exemptee, or applicant for license that prepared the plan, not by agencies that receive copies of the plan.

*Page 10, First Subparagraph, lines 1-2.* The first sentence is revised to read: "Describe specific actions operators are to take after completing all of their notification responsibilities."

*Page 10, Second Subparagraph, lines 6-11.* The two sentences beginning with "Advice may be needed \* \* \*" and "For example, a person may \* \* \*" are deleted.

*Page 10, Third Subparagraph, lines 3-5.* In the second sentence, the phrase "such as where failure is imminent or had occurred" is deleted and the phrase "may have to" is revised to read "should".

*Page 10, Third Subparagraph, lines 7-11.* The last two sentences are reworded to read: "Throughout the United States, the National Weather Service and/or other agencies have the general responsibility to issue flood warnings. Therefore, it would be beneficial to include the appropriate agency having this responsibility on the notification list so that its facilities could enhance warnings being issued."

*Page 13, Item IV.* The heading "Mitigation Activities" is changed to "Preventive Actions". This same



heading change is also appropriate for Page 7, Item IV. Page 7 is the contents for the plan.

*Page 13-14, Item IV, Paragraph B, Second Subparagraph.* The words in line 2, "must install" in the first sentence are changed to read "should consider installing". Other alternatives, in lieu of remote surveillance systems, will be acceptable provided they can be demonstrated to be workable in the event of an emergency ensuring the timely implementation of the EAP. In the second sentence, line 8, the words "must include" are changed to "should consider including". In the third sentence on page 14, line 7, the words "must be adjustable" are changed to "should be adjustable".

*Page 14, First Subparagraph, line 1.* The word "required" is revised to read "recommended".

*Page 14, Fourth Subparagraph, line 3.* The second sentence is revised to read: "In addition to having instrumentation, it may be necessary to send an observer to the dam."

*Page 5, First Subparagraph (Top of Page).* This sentence is revised to read: "If the project is continuously observed, and the action discussed in Item IV, Paragraph B is not applicable, so state."

*Page 15, Paragraph E, Second Subparagraph.* The second sentence "Remember that you direct \* \* \*" is deleted.

*Page 15, Paragraph F, Item 1.* The words "Of dams or dikes" are added to the end of the sentence "Stockpiling of materials \* \* \*".

*Page 15, Paragraph F, Item 1, First and Second Subparagraphs.* It is suggested that business and non-business telephone numbers of construction equipment operators and sources of construction equipment and emergency supplies be provided.

*Page 16, Second Subparagraph.* The subparagraph is revised to read: "Describe how the equipment operator is contacted."

*Page 16, Item 2, First Subparagraph.* All references to the NWS are followed by the words: "or other appropriate agency."

*Page 17, 18 and 19, Appendix B.* New dam break analyses are not required unless the present analyses are inadequate. Usually, an assumed failure during "sunny-day" conditions results in the worst-case condition for EAP planning purposes since a failure during flooding conditions, when people are "on-alert", will usually require no changes to the notification flowchart. When it is not obvious whether the same notification list would be appropriate for a failure during "sunny-day" conditions as well as a failure

during major flood conditions, a sensitivity analysis should be performed. The sensitivity analysis should vary key assumptions to identify their effect on various failure scenarios in order to select the most appropriate failure mode for developing the EAP. The recommendation on Page 18, Item 4, lines 4-7 to perform sensitivity analyses is included for two primary reasons:

1. A sensitivity analysis should be performed when it is not obvious that failure during a "sunny-day" condition would constitute the worst-case condition. For example, situations occur where failure during a "sunny-day" condition will not result in a hazard to downstream life and property. In this situation, a failure during flood flow conditions should be investigated to determine if notification procedures are necessary in the event of an emergency. In addition, if a failure during a flood condition will result in a different notification list or priority of notification from that considered appropriate for a "sunny-day" failure, the EAP should be modified accordingly. This condition often occurs in sparsely populated areas. A sensitivity analysis is necessary in this case to ensure that all structure that could realistically be impacted are included on the inundation map and all necessary local officials are included in the notification procedures. However, as indicated above, in many cases only one failure scenario, whether it be a "sunny-day" failure or a failure during a flood condition, requires analysis since the notification list and the priority for notification usually remains the same regardless of the antecedent condition investigated. In all cases, practical considerations should govern in conducting dambreak analyses since the ultimate goal is to develop the best workable EAP.

2. A sensitivity analysis is also necessary when a licensee/exemptee/applicant for license desires to demonstrate that a failure under foreseeable failure scenario would not constitute a hazard to life and/or property, and an exemption from EAP requirements may be justified. In requesting such an exemption, a supporting sensitivity analysis is required.

*Page 20, Item 4, First Sentence.* This sentence is revised to read: "The best available maps for evacuation planning should be used. Topographic or orthographic mapping or street maps may prove suitable".

*Page 21, Appendix D, Item 1, Second Subparagraph.* The second sentence is revised to read: "A list of the locations of all functional copies of the

notification flow chart and the EAP should be provided in this section".

*Page 22, Item 3, Second Subparagraph line 2.* The words "prior to December 31" are deleted from the first sentence. The test of the EAP can be performed anytime during the calendar year.

*Page 22, Item 4, Second Subparagraph, line 3.* The word "simulated" is deleted from this paragraph.

*Page 22, Item 3, Subparagraph 1, line 11.* After the words " \* \* \* EAP" insert the phrase "(including inundation maps)".

*Page 23, Fifth Subparagraph, line 5.* The spelling of "highlight" is corrected.

*Page 23, Appendix E, Item 1, line 1.* Insert after the word "Provide" the words "the most recent". Only the most recent documentation should be maintained in the EAP. Copies of the actual documentation sheets should be submitted to the Commission. All other copies of the EAP need only contain general statements pertaining to the documentation (e.g. a list of agencies involved, a statement that up-to-date documentation is on file, a statement that necessary coordination meetings have been held, etc.)

*Page 27 and 28.* the "m" in the word "Manning's" should be capitalized wherever it appears in the text of the Guidelines.

*Page 32 EAP at a Government Dam.* The reference to "pages 19 through 21" in the last sentence is revised to read "pages 21 through 23." Also, all references in this paragraph to Exemptee are deleted.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20951 Filed 9-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-730-000, et al.]

#### Northern Natural Gas Co., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

#### 1 Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-730-000]

September 8, 1988.

Take notice that on August 29, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-730-000, a request pursuant to § 157-205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to



transport natural gas on behalf of Petrofina Gas Pipeline Company (Petrofina), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 30,000 MMBtu/day for Petrofina from one (1) point of receipt in offshore Texas to one (1) delivery point in offshore Texas. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the estimated daily and annual quantities would be 22,500 MMBtu and 10,950,000 MMBtu respectively, and that service under § 284.223(a) commenced June 30, 1988, as reported in Docket No. ST88-5091.

*Comment date:* October 24, 1988, in accordance with Standard Paragraph G at the end of this notice.

### Trunkline Gas Company

[Docket No. CP88-719-000]

September 9, 1988

Take notice that on August 26, 1988, Trunkline Gas (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-719-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Tenngasco Corporation (Tenngasco), a marketer, under Applicant's blanket certificate issued in Docket No. CP88-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 100,000 Dt equivalent of natural gas per day on an interruptible basis on behalf of Tenngasco pursuant to a transportation agreement dated June 21, 1988, between Applicant and Tenngasco. Applicant states that the agreement provides for Applicant to receive gas from various existing points of receipt on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas. Applicant it is said, would then transport and redeliver subject gas, less fuel used and unaccounted for line loss to: (1) ANR Pipeline Company (ANR) in St. Mary Parish, Louisiana, (2) Natural Gas Pipeline Company (NGPL) in Cameron Parish, Louisiana, (3) Sabine Pipeline Company (Sabine) in Vermilion Parish, Louisiana, (4) Texas Eastern

Transcontinental Gas Pipe Line Corporation (Transco) in Beauregard Parish, Louisiana. It is said that various local distribution companies and end-users are purchasing the gas.

Applicant further states that the estimated daily and annual quantities would be 50,000 Dt equivalent and 18,250,000 Dt equivalent respectively, and that service under § 284.223(a) commence on July 1, 1988, as reported in Docket No. ST88-5181.

*Comment date:* October 24, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 3. United Gas Pipe Line Company

[Docket No. CP88-748-000]

September 9, 1988.

Take notice that on August 31, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-748-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Transco Energy-Marketing (TEM). United explains that service commenced August 6, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5266. United explains that the peak day quantity would be 99,517 MMBtu, the average daily quantity would be 99,517 MMBtu, and that the annual quantity would be 36,323,705 MMBtu. United explains that it would receive natural gas for TEM's account at points of receipt in the state of Louisiana. United states that it would redeliver the gas for TEM's account at an existing interconnection between United and Gulf States Utilities Company in Iberville Parish, Louisiana, and an existing interconnection between United and Shell's North Terrebonne Gas Processing Plant in Terrebonne Parish, Louisiana.

*Comment date:* October 24, 1988, in accordance with Standard Paragraph G at the end of this notice.

### Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20952 Filed 9-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-1-000]

### Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

September 9, 1988.

Take notice that on September 1, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

#### Sixth Revised Sheet No. 4

The tariff sheet is proposed to become effective October 1, 1988. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file



with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 88-20953 Filed 9-13-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP88-246-000]

**ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

September 9, 1988.

Take notice that ANR Pipeline Company ("ANR") on August 31, 1988 tendered for filing certain tariff sheets as a part of its FERC Gas Tariff Original Volume No. 1-A.

ANR states that the above referenced tariff sheets are being filed to conform to the tariff to operating and contracting practices, with respect to transportation service covered by ANR's Volume No. 1-A tariff, which experience has shown to be desirable and efficient.

ANR has requested that the Commission accept this filing, to become effective July 14, 1988.

ANR states that copies of the filing were served upon all of its Volume No. 1-A customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such protests or motions to intervene are due on or before September 19, 1988.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 88-20954 Filed 9-13-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TA88-2-22-000]

**CNG Transmission Corp.; Technical Conference**

September 9, 1988.

Pursuant to the Commission order which issued on August 31, 1988, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference

will be held on Tuesday, October 4, 1988 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 88-20955 Filed 9-13-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. RP86-104-007; RP87-30-015; CP86-589-006]

**Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff**

September 9, 1988.

Take notice that Colorado Interstate Gas Company ("CIG") on August 30, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes will cancel Rate Schedules EUS-1, EUS-2, GTI ON-1, and GTI OFF-1, effective August 30, 1988. The proposed EUS rate schedule cancellations correspond to the supersession of the EUS rate schedules by the GTI rate schedules as authorized by the Commission's Order issued June 30, 1986, in Docket No. RP86-104-000. Further, the GTI rate schedule cancellations correspond to the supersession of the GTI rate schedules in Original Volume No. 1, of CIG's FERC Gas Tariff by the GTI rate schedules in Original Volume No. 1-A of CIG's FERC Gas Tariff, as authorized by the Commission's Order issued September 29, 1986, in Docket No. RP86-104-001.

Copies of this filing have been served on the holders of CIG's FERC Gas Tariff, Original Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 88-20956 Filed 9-13-88; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TM89-1-26-001]

**Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff**

September 9, 1988.

Take notice that on August 31, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff the below listed tariff sheets to be effective 1, 1988.

First Revised Substitute Seventy-fifth Revised Sheet No. 5

First Revised Substitute Fortieth Revised Sheet No. 5A

Natural states that the purpose of the filing is to revise the Tariff Sheet Nos. 5 and 5A which were submitted on August 29, 1988 at Docket Nos. TM89-1-26 and RP88-209-014 to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed by the Commission pursuant to Part 382 of the Commission's Regulations. The sole purpose of these sheets is to reflect Natural's interim PGA adjustment filed on August 31, 1988 to be effective September 1, 1988.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1988.

A copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions for protests must be filed on or before Sept. 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
*Acting secretary.*

[FR Doc. 88-20957 Filed 9-13-88; 8:45 am]  
BILLING CODE 6717-01-M



**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-00273; FRL-3446-7]

**State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** There will be a 2-day meeting of the Working Committee on Registration and Classification of the State-FIFRA Issues research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Enforcement and Certification to discuss various aspects of pesticides. The meetings will be open to the public.

**DATES:** The Working Committee on Registration and Classification will meet on Tuesday and Wednesday, October 4 and 5, 1988, and the Working Committee on Enforcement and Certification will meet on Thursday and Friday, October 6 and 7, 1988. The meetings of both committees will start at 8:30 a.m. each day.

**ADDRESS:** The meetings will be held at: Holiday Inn Crown Plaza, 6th and Seneca, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7096.

**SUPPLEMENTARY INFORMATION:** The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Status reports on and discussion of the following: termiticide labeling; minor uses of pesticides; effects on labeling of groundwater protection rule; strychnine/1080 data generation and labeling; Label Improvement Program (LIP) contractor's report; proposed three tiered Restricted Use Pesticide (RUP) system, and impact of proposed changes on States; need for definitive policy on labeling and timing of RUPs, together with need for enforcement policy relating thereto; implementation of regulations in so-called Maxi-Package (40 CFR 152.46) as it applies to labeling; inerts policy; enforcement of chemigation labeling; need for uniform approach to registration by EPA for non-traditional pesticides, e.g. Biosafe; EPA's section 24(c) survey; other section 24(c) issues.

2. Other topics as appropriate.

The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Status reports on and discussion of the following: farm worker protection; minor uses of pesticides; groundwater protection; laboratory equipment replacement; inspector training needs; coordination among the States on market place sampling; uniform reporting; chemigation enforcement strategy; analytical methods for new pesticides; national pesticide applicator training workshop; enforcement special projects; dinoseb disposal; 40 CFR Part 171 regulations; evaluation of private applicator training; revitalization of field training programs pending recertification; and other certification and training issues.

2. Other topics as appropriate.

Dated: September 1, 1988.

Douglas D. Camp, Jr.

Director, Office of Pesticide Programs.

[FR Doc. 88-20904 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50680; FRL-3446-8]

**Issuance of Experimental Use Permits**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits.

**7669-EUP-24. Issuance.** BASF Corporation, Agricultural Chemicals Group, 100 Cherry Hill Road, Parsippany, NJ 07054. This experimental use permit allows the use of 24.6 pounds of the growth regulator N,N-dimethylpiperidinium chloride on 120 acres of grapes to enhance fruit set and

yield. The program is authorized only in the States of Michigan, New York, Ohio, and Pennsylvania. The experimental use permit is effective from June 3, 1988 to June 30, 1989. Temporary tolerances for residues of the active ingredient in or on grapes, raisins, raisin waste, and pomace (wet and dry) have been established. (Robert Taylor, PM 25, Rm. 243, CM#2, (703-557-1800))

**239-EUP-114. Issuance.** Chevron Chemical Company, P.O. Box 4010, Richmond, CA 94804. This experimental use permit allows the use of 17,100 pounds of the insecticide acephate on 2,250 acres of cotton to evaluate its compatibility with another registered cotton insecticide. The program is authorized only in the State of Mississippi. The experimental use permit is effective from July 20, 1988 to July 20, 1989. A permanent tolerance for residues of the active ingredient in or on cotton-seed has been established (40 CFR 180.108). (William Miller, PM 16, Rm. 211, CM#2, (703-557-2600))

**464-EUP-87. Renewal.** Dow Chemical Company, Agricultural Products Department, 9008 Building, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 31,500 pounds (over 2 years) of the herbicide 3,5,6-trichloro-2-pyridinyloxyacetic acid on 1,053 acres of ditch banks, ponds, and lakes to evaluate the control of weeds. The program is authorized only in the States of Alabama, California, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, New Jersey, Ohio, North Carolina, Texas, Washington, and Wisconsin. The experimental use permit was previously effective from June 24, 1986 to June 24, 1988; the permit is now effective from July 11, 1988 to July 11, 1990. Temporary tolerances for residues of the active ingredient in or on fish and shellfish have been established. (Robert Taylor, PM 25, Rm. 243, CM#2, (703-557-1800))

**464-EUP-98. Issuance.** Dow Chemical Company, Agricultural Products Department, 9008 Building, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 3,000 pounds of the herbicide 3,5,6-trichloro-2-pyridinyloxyacetic acid on 4,000 acres of rice to evaluate the control of weeds. The experimental use permit is effective from July 11, 1988 to July 11, 1990. A temporary tolerance for residues of the active ingredient in or on rice (grain and straw) has been established. (Robert Taylor, PM 25, Rm. 243, CM#2, (703-557-1800))

**352-EUP-145. Issuance.** E.I. duPont de Nemours & Company, Agricultural Products Department, Walkers Mill



Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 30.08 pounds (over 2 years) of the herbicide methyl 3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl]amino] carbon]amino]sulfonyl-2-thiophenecarboxylate on 7,700 acres of soybeans to evaluate the control of various weeds. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Ohio, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from June 21, 1988 to June 21, 1990. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 243, CM # 2, (703-557-1800))

279-EUP-105. Extension. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 3,168 pounds of the insecticide/miticide cyclopropanecarboxylate acid, 3-(2-chloro-3,3-trifluoro-1-propenyl)-2,2-dimethyl-(2-methyl[1,1'-biphenyl]-3-yl) methyl ester on 9,900 acres of field corn to evaluate the control of various insects. The program is authorized only in the States of California, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, and Virginia. The experimental use permit is effective from July 10, 1988 to July 10, 1989. A temporary tolerance for residues of the active ingredient in or on field corn has been established. (George LaRocca, PM 15, Rm. 204, CM # 2, (703-557-2400))

279-EUP-106. Extension. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 160 pounds of the insecticide/miticide cyclopropanecarboxylate acid, 3-(2-chloro-3,3-trifluoro-1-propenyl)-2,2-dimethyl-(2-methyl[1,1'-biphenyl]-3-yl) methyl ester on 200 acres of walnuts to evaluate the control of various insects. The program is authorized only in the States of California and Oregon. The experimental use permit is effective from July 10, 1988 to July 10, 1989. A temporary tolerance for residues of the active ingredient in or on walnuts has been established. (George LaRocca, PM 15, Rm. 204, CM # 2, (703-557-2400))

279-EUP-110. Renewal. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA

19103. This experimental use permit allows the use of 364 pounds of the insecticide/miticide cyclopropanecarboxylate acid, 3-(2-chloro-3,3-trifluoro-1-propenyl)-2,2-dimethyl-(2-methyl[1,1'-biphenyl]-3-yl) methyl ester on 455 acres of strawberries to evaluate the control of various insects. The program is authorized only in the States of California, Florida, Indiana, Louisiana, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Washington. The experimental use permit is effective from July 10, 1988 to July 10, 1989. A temporary tolerance for residues of the active ingredient in or on strawberries has been established. (George LaRocca, PM 15, Rm. 204, (703-557-2400))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: September 1, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-20905 Filed 9-13-88; 8:45 am]

BILLING CODE 5650-50-M

#### [OPP-180786; FRL-3444-3]

#### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 19 States listed below and a crisis exemption initiated by the Minnesota Department of Agriculture. These exemptions, issued during the month of June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Also listed are 10 denials from EPA of requests for specific exemptions from the Alabama, Delaware, Illinois, Maryland, Michigan, New Hampshire, Pennsylvania, and West Virginia Departments of Agriculture, New Jersey Department of Environmental Protection, and the Virginia Department of Agriculture and Consumer Services. Information on these restrictions is

available from the contact persons in EPA listed below.

**DATES:** See each specific or crisis exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of anilazine and cupric hydroxide on watercress to control *cercospora* leaf spot; June 3, 1988, to October 31, 1988. (Jim Tompkins)

2. Arizona Commission of Agriculture and Horticulture for the use of sulfur dioxide on table grapes to control gray mold and bunch rot; June 6, 1988, to July 31, 1988. (Libby Pemberton)

3. Arizona Commission of Agriculture and Horticulture for the use of triadimefon on tomatoes to control powdery mildew; June 16, 1988, to July 31, 1988. (Jim Tompkins)

4. Florida Department of Agriculture and Consumer Services for the use of propiconazole (Tilt) on sweet corn to control *Puccinia sorghii* and *Puccinia polysora*; June 28, 1988, to January 1, 1989. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

5. Georgia Department of Agriculture for the use of sodium chlorate on southern peas and lima beans as a desiccant defoliant; June 30, 1988, to November 15, 1988. (Robert Forrest)

6. Idaho Department of Agriculture for the use of imazalil on sweet corn seed to control dieback syndrome caused by seedling diseases; June 3, 1988, to April 15, 1989. (Gene Asbury)

7. Illinois Department of Agriculture for the use of sethoxydim on snap beans to control Johnson grass; June 6, 1988, to August 15, 1988. (Robert Forrest)

8. Maryland Department of Agriculture for the use of anilazine on watercress to control *Cercospora* leaf spot; June 3, 1988, to October 31, 1988. (Jim Tompkins)

9. Michigan Department of Agriculture for the use of fluzifop-butyl on lettuce and celery to control post-emergent grassy weeds; June 3, 1988, to September 1, 1988. (Libby Pemberton)



10. Montana Department of Agriculture for the use of fluralofen on alfalfa grown for seed to control grasshoppers, alfalfa aphids, and lygus bugs; June 15, 1988, to August 31, 1988. (Gene Asbury)

11. Nebraska Department of Agriculture for the use of sethoxydim on field corn to control weeds; June 3, 1988, to July 31, 1988. (Robert Forrest)

12. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray mold (*Botrytis cinerea*); June 1, 1988, to September 15, 1988. (Gene Asbury)

13. New York Department of Environmental Conservation for the use of metolachlor on cabbage (transplanted) to control yellow nutsedge and hairy galinsaga; June 28, 1988, to October 31, 1988. Solicitation of public comment was published in the Federal Register of June 1, 1988 (53 FR 20011), no comments were received. This exemption was granted because an emergency situation appears to exist. There are no registered alternative herbicides which will provide adequate control. A significant economic loss is likely to occur without the use of metolachlor. A tolerance petition from IR-4 for this use has been received. (Jim Tompkins)

14. Ohio Department of Agriculture for the use of chloramben on lettuce and endive/escarole (seed or transplant use) to control livid amaranth weed; June 23, 1988, to September 30, 1988. (Gene Asbury)

15. Ohio Department of Agriculture for the use of fenamiphos on blueberries to control nematodes; June 15, 1988, to June 15, 1989. (Libby Pemberton)

16. Oklahoma Department of Agriculture for the use of DCNA (Botran) on peanuts to control Sclerotinia; June 29, 1988, to October 30, 1988. (Jim Tompkins)

17. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray mold and white mold; June 1, 1988, to September 30, 1988. (Gene Asbury)

18. Oregon Department of Agriculture for the use of glyphosate on wheat to control common rye; June 3, 1988, to July 1, 1988. (Donald Stubbs)

19. Oregon Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; June 13, 1988, to July 21, 1988. (Robert Forrest)

20. Pennsylvania Department of Agriculture for the use of anilazine and cupric hydroxide on watercress to control *Cercospora* leaf spot; June 3, 1988, to October 31, 1988. (Jim Tompkins)

21. Texas Department of Agriculture for the use of DCNA (Botran) on peanuts to control Sclerotinia; June 29, 1988, to October 30, 1988. (Jim Tompkins)

22. Utah Department of Agriculture for the use carbaryl on barley to control cereal leaf beetles; June 13, 1988, to September 30, 1988. (Robert Forrest)

23. Washington Department of Agriculture for the use of fenvalerate on cranberries to control this black vine weevil; June 15, 1988, to August 30, 1988. (Gene Asbury)

24. Washington Department of Agriculture for the use of vinclozalin on snap beans to control gray mold and white mold; June 1, 1988, to September 30, 1988. (Gene Asbury)

25. West Virginia Department of Agriculture for the use of anilazine and cupric hydroxide on watercress to control *Cercospora*; June 3, 1988, to October 31, 1988. (Jim Tompkins)

26. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of vinclozolin on snap beans to control white mold; June 1, 1988, to September 30, 1988. (Gene Asbury)

27. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of carboxin (Pro-Gro) on onion seedlings to control onion smut disease; June 15, 1988, to May 31, 1989. (Gene Asbury)

A crisis exemption was initiated by the Minnesota Department of Agriculture on June 2, 1988, for the use of sethoxydim on lupines to control quackgrass, wild proso millet, and volunteer corn. This program has ended. (Robert Forrest)

EPA has denied requests from the Alabama, Delaware, Illinois, Maryland, Michigan, New Hampshire, Pennsylvania, and West Virginia Departments of Agriculture, New Jersey Department of Environmental Protection, and the Virginia Department of Agriculture and Consumer Services for the use of hexythiazox on apples to control European red mites and to control both European red mites and two-spotted mites in New Hampshire. Notices of receipt of these specific exemptions for Delaware and New Jersey were published in the Federal Registers of March 30, 1988 (53 FR 10287) and April 6, 1988 (53 FR 11338), respectively. The Agency has denied requests from these 10 States because of toxicological concerns and unresolved questions about residue chemistry data submitted to support the tolerances for this chemical. At this time the lack of analytical methodology and residue data for secondary residues preclude estimation and enforcement of the probable residues of hexythiazox and its

metabolites in milk, meat, and meat byproducts. The risks to applicators as well as to the public from dietary exposure from the proposed use, are currently calculated as unacceptable. (Libby Pemberton)

Authority: 7 U.S.C. 138.

Dated: August 29, 1988.

Douglas D. Campit,

Director, Office of Pesticide Programs.

[FR Doc. 88-20509 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3235, 5G3238 AND 5G3289/T573; FRL-3446-5]

### Biphenthrin; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has established temporary tolerances for residues of the insecticide biphenthrin in or on certain raw agricultural commodities. These temporary tolerances were requested by FMC Corporation.

**DATE:** These temporary tolerances expire July 10, 1989 (PP 5G3235 and 5G3238) and July 27, 1989 (5G3289).

#### FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2400.

**SUPPLEMENTARY INFORMATION:** FMC Corp., Agricultural Chemicals Group, 2000 Market St., Philadelphia, PA 19103, has requested in pesticide petitions (PP) 5G3235, 5G3238, and 5G3289 the establishment of temporary tolerances for residues of the insecticide biphenthrin (cyclopropanecarboxylic acid, 3-(2-chloro-3,3-trifluoro-1-propenyl)-2,2-dimethyl-2-methyl [1,1'-biphenyl]-3-yl methyl ester) in or on the raw agricultural commodities field corn grain at 0.05 part per million (ppm); field corn silage at 2.0 ppm; field corn fodder at 4.0 ppm; meat of horses, hogs, and cattle at 0.1 ppm; meat byproducts at 0.3 ppm; fat at 0.5 ppm; milk at 0.03 ppm (PP 5G3235); walnuts at 0.05 ppm (PP 5G3238); and strawberries at 1.0 ppm (PP 5G3289). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the



provisions of the experimental use permits 279-EUP-105, 279-EUP-106, and 279-EUP-110, respectively, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of these temporary tolerances will protect the public health. Therefore, these temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. FMC Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

The tolerances for field corn grain at 0.05 ppm; field corn silage at 2.0 ppm; field corn fodder at 4.0 ppm; meat of horses, hogs, and cattle at 0.1 ppm; meat by-products at 0.3 ppm; fat at 0.5 ppm; milk at 0.03 ppm; and walnuts at 0.05 ppm expire July 10, 1989. The tolerance for strawberries at 1.0 ppm expires July 27, 1989. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after these expiration dates will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 2, 1988.

Edwin F. Tinsworth,  
Acting Director, Registration Division, Office  
of Pesticide Programs.

[FR Doc. 88-20888 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3469/T575; FRL-3446-4]

#### E.I. du Pont de Nemours and Co., Inc.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the pesticide *trans*-5-(4-chlorophenyl-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) in or on certain raw agricultural commodities. These temporary tolerances were requested by E.I. du Pont de Nemours and Co., Inc.

DATE: These temporary tolerances expire July 31, 1989.

#### FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2400.

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Inc., Agricultural Products Dept., Walkers' Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition (PP) 7G3469 the establishment of temporary tolerances for residues of the pesticide *trans*-5-(4-chlorophenyl-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) in or on the raw agricultural commodities fresh market grapes at 2.0 parts per million (ppm), and fresh market citrus fruits at 0.5 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352-EUP-139, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the

condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 31, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: September 1, 1988.

Edwin F. Tinsworth,  
Acting Director, Registration Division, Office  
of Pesticide Programs.

[FR Doc. 88-20902 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 8G3602/T572; FRL-3445-8]

#### E.I. Dupont de Nemours and Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection  
Agency (EPA).



**ACTION:** Notice.

**SUMMARY:** EPA has established a temporary tolerance for residues of the herbicide methyl-3-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino[sulfonyl]-2-thiophenecarboxylate in or on the raw agricultural commodity soybeans at 0.1 part per million.

**DATE:** This temporary tolerance expires June 21, 1990.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-1800.

**SUPPLEMENTARY INFORMATION:** E.I.

Dupont de Nemours and Co., Agricultural Products Department, Walker Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition (PP) 8C3602 the establishment of a temporary tolerance for residues of the herbicide methyl-3-[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino[sulfonyl]-2-thiophene-carboxylate in or on the raw agricultural commodity soybeans at 0.1 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352-EUP-145, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. DuPont de Nemours and Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of

the EPA or the Food and Drug Administration.

This tolerance expires June 21, 1990. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-20903 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3518/T569; FRL-3446-6]

**Tefluthrin; Establishment of Temporary Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established a temporary tolerance for residues of the insecticide tefluthrin in or on the raw agricultural commodity corn grain, field and pop at 0.01 part per million.

**DATE:** This temporary tolerance expires June 10, 1989.

**FOR FURTHER INFORMATION CONTACT:**

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2400.

**SUPPLEMENTARY INFORMATION:** ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, has requested in pesticide petition (PP) 7G3518 the establishment of a temporary tolerance for residues of the insecticide tefluthrin (2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1a,3a)-(Z)-(+)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodity corn grain, field and pop at 0.01 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 10182-EUP-42, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 10, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-



354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 1, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-20900 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3306/T571; FRL-3445-7]

### Triclopyr; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has renewed temporary tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on certain raw agricultural commodities.

**DATE:** These temporary tolerances expire June 11, 1990.

#### FOR FURTHER INFORMATION CONTACT:

By mail:

Robert Taylor, Product Manager (PM)  
25, Registration Division (TS-767C),  
Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M St. SW., Washington, DC 20460.  
Office location and telephone number:  
Rm. 245, CM #2, 1921 Jefferson Davis  
Highway, Arlington, VA, (703) 557-  
1800.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, which was published in the Federal Register of August 6, 1986 (51 FR 28272), stating that a temporary tolerance had been established for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyl) oxy acetic acid, and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy 3,5,6-trichloropyridine in or on the raw agricultural commodities fish at 0.2 part per million (ppm) and shellfish at 0.2 ppm. An allowable residue level of 0.5 ppm in potable water is renewed in compliance with the Safe Drinking Water Act (SDWA). These tolerances were renewed in response to pesticide petition (PP) 6G3306, submitted by Dow Chemical Co., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640-1706.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 464-EUP-87, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.
2. Dow Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 11, 1990. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 31, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-20899 Filed 9-13-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 8G3571/T570; FRL-3445-9]

### Triclopyr; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA has established temporary tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Dow Chemical Co.

**DATE:** These temporary tolerances expire July 11, 1990.

#### FOR FURTHER INFORMATION CONTACT:

By mail:

Robert Taylor, Product Manager (PM)  
25, Registration Division (TS-767C),  
Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M St. SW., Washington, DC 20460.  
Office location and telephone number:  
Rm. 245, CM #2, 1921 Jefferson Davis  
Highway, Arlington, VA, (703) 557-  
1800.

**SUPPLEMENTARY INFORMATION:** Dow Chemical Co., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640-1706, has requested in pesticide petition (PP) 8G3571 the establishment of temporary tolerances for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyl) oxy acetic acid and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities rice grain at 0.5 part per million (ppm), and rice straw at 8.0 ppm, and for triclopyr in meat, fat, and meat by-products (except kidney) at 0.2 ppm, poultry kidney at 1.0 ppm, and eggs at 0.3 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 464-EUP-98, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary



tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Dow Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 11, 1990. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: August 31, 1988.

Edwin F. Tinsworth,  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. 88-20901 Filed 9-13-88; 8:45 am]

BILLING CODE 6580-50-M

[OPTS-51713; FRL-3446-9]

# **Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-two such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

P 88-1823—July 19, 1988.

P 88-1847, 88-1848, 88-1849—  
November 15, 1988.

P 88-1850, 88-1851—November 16,  
1988.

P 88-1852, 88-1853, 88-1854, 88-1855,  
88-1856, 88-1857, 88-1858, 88-1859, 88-  
1860, 88-1861—November 19, 1988.

P 88-1862, 88-1863, 88-1864, 88-1865,  
88-1866, 88-1867, 88-1868, 88-1869, 88-  
1870, 88-1871, 88-1872—November 20,  
1988.

P 88-1873, 88-1874, 88-1875, 88-1876,  
88-1877—November 21, 1988.

Written comments by:

P 88-1823—June 19, 1988.

P 88-1847, 88-1848, 88-1849—October  
16, 1988.

P 88-1850, 88-1851—October 17, 1988.

P 88-1852, 88-1853, 88-1854, 88-1855,  
88-1856, 88-1857, 88-1858, 88-1859, 88-  
1860, 88-1861—October 20, 1988.

P 88-1862, 88-1863, 88-1864, 88-1865,  
88-1866, 88-1867, 88-1868, 88-1869, 88-  
1870, 88-1871, 88-1872—October 21,  
1988.

P 88-1873, 88-1874, 88-1875, 88-1876,  
88-1877—October 22, 1988.

**ADDRESS:** Written comments, identified  
by the document control number

"[OPTS-51713]" and the specific PMN  
number should be sent to: Document  
Processing Center (TS-790), Office of  
Toxic Substances, Environmental  
Protection Agency, Rm. L-100, 401 M  
Street, SW., Washington, DC 20460,  
(202) 554-1305.

## **FOR FURTHER INFORMATION CONTACT:**

Lawrence Cullen, Premanufacture  
Notice Management Branch, Chemical  
Control Division (TS-794), Office of  
Toxic Substances, Environmental  
Protection Agency, Rm. E-611, 401 M  
Street, SW., Washington, DC 20460 (202)  
382-3725.

**SUPPLEMENTARY INFORMATION:** The  
following notice contains information  
extracted from the nonconfidential  
version of the submission provided by  
the manufacturer on the PMNs received  
by EPA. The complete nonconfidential  
document is available in the Public  
reading Room NE-G004 at the above

address between 8:00 a.m. and 4:00 p.m.,  
Monday through Friday, excluding legal  
holidays.

## **P 88-1823**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyacrylate sodium  
salt.

*Use/Production.* (S) Dispersant and  
process aid. Prod. range: Confidential.

## **P 88-1847**

*Importer.* Mitsubishi Kasei America  
Inc.

*Chemical.* (G) Substituted  
benzophenone ester.

*Use/Import.* (G) Material for  
lithography. Import range: 100-300 kg/yr.

## **P 88-1848**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polyester.

*Use/Production.* (G) Component of a  
specialty coating having an open use.  
Prod. range: 100,000-400,000 kg/yr.

## **P 88-1849**

*Manufacturer.* Confidential.

*Chemical.* (G) Aliphatic aromatic  
acrylic salt.

*Use/Production.* (G) Specialty coating  
with an open use. Prod. range: 28,000-  
113,000 kg/yr.

## **P 88-1850**

*Manufacturer.* Confidential.

*Chemical.* (G) Mixed alkylated  
diphenylamine.

*Use/Production.* (G) Petroleum rubber  
additive. Prod. range: Confidential.

## **P 88-1851**

*Manufacturer.* The Dow Chemical  
Company.

*Chemical.* (G) Halogenated alkyl  
phenol.

*Use/Production.* (S) Chemical  
intermediate. Prod. range: Confidential.

## **P 88-1852**

*Manufacturer.* Confidential.

*Chemical.* (G) Polymer of  
polyalkyleneamine and acrylamide acid  
salt.

*Use/Production.* (S) Textile dye. Prod.  
range: Confidential.

## **P 88-1853**

*Importer.* Hoechst Celanese  
Corporation.

*Chemical.* (G) Nickel-azomethine  
dyestuff complex.

*Use/Import.* (S) Color concentrate for  
polyester fiber producers. Prod. range:  
Confidential.

## **P 88-1854**

*Manufacturer.* Confidential.



*Chemical.* (G) Prepolymer of an aliphatic diisocyanate with diol and an aromatic polyester.

*Use/Production.* (G) Intermediate for packaging adhesive. Prod. range: Confidential.

**P 88-1855**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl amine salt of a polymer of a diisocyanate an aromatic polyester diols and qatwr.

*Use/Production.* (G) Packaging adhesive. Prod. range: Confidential.

**P 88-1856**

*Manufacturer.* Additives Division, Ciba-Geigy Corp.

*Chemical.* (S) Ethanone 2-((4-methylphenyl)sulfonyl)oxy)-1,2-diphenyl.

*Use/Production.* (S) Thermoset organic coatings. Prod. range: Confidential.

**P 88-1857**

*Manufacturer.* Confidential.

*Chemical.* (G) Acid functional polyester with low molecular weight acid.

*Use/Production.* (G) Dispersive use. Prod. range: 30,000-200,000 kg/yr.

**P 88-1858**

*Importer.* Biddle Sawyer Corporation.

*Chemical.* (S) 1,12-dodecanedial.

*Use/Import.* (S) Resin intermediate. Import range: Confidential.

**P 88-1859**

*Importer.* Biddle Sawyer Corporation.

*Chemical.* (S) 1,8 octanedial.

*Use/Import.* (S) Resin intermediate. Import range: Confidential.

**P 88-1860**

*Importer.* Biddle Sawyer Corporation.

*Chemical.* (S) 7-methyl-1,8-Octadiene.

*Use/Import.* (S) Copolymer. Import range: Confidential.

**P 88-1861**

*Importer.* Organic Dyestuff Corporation.

*Chemical.* (G) Reactive blue 171.

*Use/Import.* (S) Textile dye. Import range: 3,000-6,000 kg/yr.

**P 88-1862**

*Manufacturer.* Confidential.

*Chemical.* (G) Isocyanate-terminated polyether/urethane polymer.

*Use/Production.* (G) Adhesive for flexible laminations. Prod. range: Confidential.

**P 88-1863**

*Importer.* Confidential.

*Chemical.* (G) Organophosphorous compound.

*Use/Import.* (G) Petroleum catalyst. Import range: Confidential.

**P 88-1864**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl amine salt of polymer of diisocyanate aliphatic and aromatic polymers, aliphatic diols and water.

*Use/Production.* (G) Packaging adhesive. Prod. range: Confidential.

**P 88-1865**

*Manufacturer.* Confidential.

*Chemical.* (G) Sodium phenylethyl naphthalene sulfonate.

*Use/Production.* (S) Anti-caking agent. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 5 g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

**P 88-1866**

*Importer.* Reichhold Chemicals.

*Chemical.* (G) Polyurethane.

*Use/Import.* (S) Film laminating adhesive. Import range: Confidential.

**P 88-1867**

*Manufacturer.* Confidential.

*Chemical.* (G) Prepolymer of an aromatic diisocyanate and in aliphatic diisocyanate with diols and polyether.

*Use/Production.* (G) Intermediate for a packaging adhesive. Prod. range: Confidential.

**P 88-1868**

*Manufacturer.* Confidential.

*Chemical.* (G) Chemically modified beta-cyclodextrin.

*Use/Production.* (G) Inclusion complexation agent. Prod. range: Confidential.

**P 88-1869**

*Importer.* Confidential.

*Chemical.* (G) Phenol 2-(substituted) azo-4-sulfo-phenol, 2-(substituted) azo-4-nitor-metal complexes sodium salts.

*Use/Import.* (S) Leather dye. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit).

**P 88-1870**

*Importer.* Confidential.

*Chemical.* (G) Phenol 2-(substituted) azo-5-nitro-phenol-2-(substituted) azo-4-chloro-, metal complexes mixed hydrogen sodium salts.

*Use/Import.* (S) Leather dye. Import range: Confidential.

**P 88-1871**

*Importer.* Confidential.

*Chemical.* (G) Benzoic acid, 2-(substituted) azo-5-sulfo-, benzoic acid,

2-(Substituted) azo metal complexes sodium salts.

*Use/Import.* (S) Leather dye. Import range: Confidential.

**P 88-1872**

*Importer.* Confidential.

*Chemical.* (G) Benzoic acid 2-(substituted) azo-5-nitro-benzoic acid 2-(substituted) azo-4-sulfato metal complexes sodium salts.

*Use/Import.* (S) Leather dye. Import range: Confidential.

**P 88-1873**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkenylsuccinimide.

*Use/Production.* (G) Dispersive, open use.

**P 88-1874**

*Manufacturer.* Confidential.

*Chemical.* (G) Poly (oxyalkylene) glycol.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 88-1875**

*Importer.* Huls America Inc.

*Chemical.* (G) Polyamide from aliphatic diamine and aliphatic diacid.

*Use/Import.* (S) Extrusion and injection moulding. Import range: Confidential.

**P 88-1876**

*Manufacturer.* Confidential.

*Chemical.* (G) Ester-imide-aldehyde.

*Use/Production.* (G) Coating. Prod. range: Confidential.

**P 88-1877**

*Manufacturer.* Confidential.

*Chemical.* (G) Poly (oxyalkylene) amine.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

Date: September 7, 1988.

Steve Newburg-Rinn,  
Chief, Public Data Branch, Information  
Management Division, Office of Toxic  
Substances.

[FR Doc. 88-20906 Filed 9-13-88; 8:45am]

BILLING CODE 6560-50-M

[OPTS-59263; FRL-3447-1]

# **Toxic and Hazardous Substances; Test Market Exemption Applications**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the



premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

**Written comments by:**

T 88-17, 88-18—September 24, 1988.

T 88-19—September 30, 1988.

**ADDRESS:** Written comments, identified by the document control number "(OPTS-59263)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, S.W., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence Cullen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, S.W., Washington, DC 20460 (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**T 88-17**

*Close of Review Period.* October 8, 1988.

*Manufacturer.* Confidential.

*Chemical.* (G) Cyanoguanidine amine polymer, acid salt.

*Use/Production.* Dye fixing agent.

*Prod. range.* Confidential.

*Toxicity Data.* Acute oral toxicity: LD<sub>50</sub> 3,310 mg/kg species (RAT). Acute dermal toxicity: LD<sub>50</sub> 1,060 mg/kg species (Rabbit). Inhalation toxicity: LC<sub>50</sub> 5,620 ppm/1h species (Mouse).

**T 88-18**

*Close of Review Period.* October 8, 1988.

*Manufacturer.* Confidential.

*Chemical.* (G) Cyanoguanidine amine polymer, acid salt.

*Use/Production.* Dye fixing agent.

*Prod. range.* Confidential.

*Toxicity Data.* Acute oral toxicity: LD<sub>50</sub> 3,310 mg/kg species (Rat). Acute dermal toxicity: LD<sub>50</sub> 1,060 mg/kg species (Rabbit). Inhalation toxicity: LC<sub>50</sub> 5,620 ppm/1h species (Mouse).

**T 88-19**

*Close of Review Period.* October 8, 1988.

*Importer.* Confidential.

*Chemical.* (G) Aliphatic polyurethane elastomer.

*Use/Import.* (G) Elastomeric coatings.

*Import range.* Confidential.

*Date:* September 6, 1988.

*Steve Newburg-Rinn,*

*Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.*

[FR Doc. 88-20907 Filed 9-13-88; 8:45 am]

**BILLING CODE 6590-50-M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* New Collection

*Title:* National Flood Insurance Program; Erosion Benefits

*Abstract:* States interested in certifying structures effected by erosion provide statutes requiring setback for shore construction and copy of erosion rate data base. When approved, state certifies structure as subject to imminent collapse, FEMA uses supporting data to determine whether to pay insurance benefits.

*Type of Respondents:* State or local governments

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 756

*Number of Respondents:* 126

*Estimated Average Burden Hours Per Response:* 12 hours

*Frequency of Response:* Other—One-Time

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

*Date:* September 7, 1988.

*Wesley C. Moore,*

*Director, Office of Administrative Support.*

[FR Doc. 88-20869 Filed 9-13-88; 8:45 am]

**BILLING CODE 6718-01-M**

## FEMA Advisory Board; Continuation

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I, Supp. II, 1972), GSA Regulation 41 CFR 101.6 and FEMA Regulation 44 CFR Part 12, the Director of FEMA has determined that the continuation of the FEMA Advisory Board is in the public interest in connection with the performance of duties imposed on the Agency by law.

As the principal advisory body to the Director, the objective of the Board is to continue to provide him with independent advice on FEMA plans and programs in areas of civil emergencies, such as: Natural or man-made disasters; mobilization of resources during crisis or war; civil defense and continuity-of-government measures during conflict; post-conflict efforts for national reconstitution; and other civil emergency roles assigned by Acts of Congress or by Executive Order.

The Board will draw on the expertise of its members and other sources to provide advice and make recommendations to the Director. In addition to its role of providing guidance on major issues across all FEMA program areas, the Board will provide advice concerning mission priorities, strategies for addressing Agency objectives, critiques of emerging policy and program concepts, and options for solutions to major management problems.

The Board functions solely as an advisory body, and complies fully with the provisions of the Federal Advisory Committee Act (the "Act").

The Board consists of 21 members that have been appointed by the Director. The Board will contain broad and balanced representation from all interested segments including, but not limited to, former government officials, both Federal and State; respected representatives from academia, science and the research community; leaders in



business and industry; and the public at large. To ensure the Board is objective and not influenced by special interests, members are required to file an annual Statement of Financial Interests and Affiliations and a Conflict of Interest Agreement (recusal statement). The members will serve at the discretion of the Director with two-year, renewable terms.

Interested persons are invited to submit comments regarding the recommendation to continue the FEMA Advisory Board. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

Date: August 25, 1988.

Julius W. Becton, Jr.,  
Director.

[FR Doc. 88-20870 Filed 9-13-88; 8:45 am]

BILLING CODE 6718-21-M

## FEDERAL HOME LOAN BANK BOARD Community Reinvestment Act

Date: September 8, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Community Reinvestment Act" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided will enable examiners to assess the institution's lending performance to the local community it serves. The Board estimates that it will require 1.67 hours per response to complete this collection of information.

**DATES:** Comments on the information collection request are welcome and should be received on or before September 29, 1988.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are

obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

**FOR FURTHER INFORMATION CONTACT:** Johnnie B. Booker, Office of Community Investment, 202-377-6238, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.  
John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 88-20937 Filed 9-13-88; 8:45 am]

BILLING CODE 6720-01-M

[No. 88-911]

## Powers of Receiver and Conduct of Receiverships; Preferred Stock of Finance Subsidiaries

Date: August 31, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is clarifying its position concerning the manner in which the Federal Savings and Loan Insurance Corporation ("FSLIC") would exercise its powers as Receiver for a parent thrift association in respect of a finance subsidiary of the parent that issues preferred stock. The Board wishes to make it clear that if a parent thrift is placed into receivership or conservatorship, the FSLIC as receiver would not seek to consolidate such a subsidiary's assets into the parent thrift, provided certain conditions are met. In this connection, the Board adopted, on August 31, 1988, Resolution No. 88-911.

**EFFECTIVE DATE:** August 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Henry R.F. Griffin, Associate General Counsel, (202) 377-6442; Nancy Weissman, Attorney (202) 377-7293; or Steve Stuart, FSLIC, (202) 254-2145; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board is the operating head of the Federal Savings and Loan Insurance Corporation; and

Whereas, The Board has considered the potential benefits of preferred stock issued by finance subsidiaries of insured institutions in reducing the cost of funds of insured institutions:

Now, therefore, it is resolved that the following terms shall be used as defined below:

"Board": The Federal Home Loan Bank Board.

"FSLIC": The Federal Savings and Loan Insurance Corporation.

"Liquidation Preference": The amount (in addition to accumulated and unpaid dividends) that holders of PS are entitled to receive, upon any voluntary or involuntary liquidation, dissolution, or winding up of the issuer, out of the assets of the issuer available for distribution to stockholders after satisfying claims of creditors, but before any distribution is made to the holders of the common stock.

"Parent": An insured institution, as defined in § 563.13-2(a)(5) of the Regulations, that holds all of the voting or common stock of a Subsidiary.

"PS": Preferred stock issued by a Subsidiary which may be redeemed at par at periodic intervals.

"Receiver": The FSLIC as conservator, receiver or legal custodian of an insured institution pursuant to appointment by the Board.

"Regulations": The regulations of the Board appearing at 12 CFR Parts 500-599.

"Subsidiary": A finance subsidiary of an insured institution, as defined in § 563.13-2(a)(4) of the Regulations, that issues PS.

Resolved further, That the Board hereby finds and determines that it is desirable that it clarify the manner in which the FSLIC would exercise its powers as Receiver of a Parent in respect of a Subsidiary; and

Resolved further, That the Board commits that it shall use its powers under the National Housing Act to ensure that any receivership, and to the fullest extent permitted by law, any conservatorship or similar proceeding, shall be conducted solely by the FSLIC under federal law and regulations; and

Resolved further, That with respect to the receivership, conservatorship, or custody of a Parent, the Board, the FSLIC in its corporate capacity, and a Receiver shall not challenge the separate corporate identity of a Subsidiary or a Parent's previous transfer of assets to its Subsidiary, or delay or hinder the timely payment of sums properly due holders or impair or alter their rights and priorities as holders of PS, provided that:

1. The Subsidiary was organized in compliance with §§ 545.82 and 563.13-2 of the Regulations;

2. The Parent's board of directors has adopted resolutions approving each issuance of PS as being in the best



interests of the Parent and its depositors, such board having determined in such resolutions that the proposed transaction constituted a reasonable course of action designed to improve the financial position of the Parent without impairing the rights and interests of its creditors. The Parent's board of directors, in adopting such resolutions, shall have received, in form and substance satisfactory to it, and may rely upon:

(a) A letter from a reputable investment banking firm or similar organization stating that, based upon the assumptions set forth in such letter, it believes that:

(i) The value to the Parent of the Subsidiary's common stock received by the Parent in connection with the transaction, and the net proceeds from the sale of the Subsidiary's PS, taken together, represent a fair consideration and reasonably equivalent value for assets transferred from the Parent to the Subsidiary; and

(ii) The financial terms of the transaction, after taking into account the benefits which the Parent expects to receive in connection with the transaction, constitute a reasonable course of action from a financial point of view designed to improve the financial position of the Parent;

(b) An opinion of counsel, which may rely upon assumptions of value contained in the letter obtained pursuant to paragraph 2(a) and such other assumptions as are customary for such options, that:

(i) The transfer of assets to the Subsidiary does not constitute a fraudulent conveyance or fraudulent transfer of the Parent's property under applicable law; and

(ii) The Subsidiary is a separate corporate entity;

3. The terms of the PS shall permit the PS to be redeemed at any dividend payment date, with customary notice, in whole at a redemption price equal to the Liquidation Preference of the PS plus accumulated and unpaid dividends thereon to the redemption date, without any additional penalty, redemption costs or premium; and

Resolved further, That nothing herein shall otherwise restrict the powers available to a Receiver; and

Resolved further, That the Board will not amend or repeal this resolution without appropriate public notice of at least thirty (30) days; and such amendment or repeal shall operate only with respect to PS transactions entered into more than ten (10) days following such publication; and

Resolved further, That the Secretary to the Board shall forward this

resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board,  
Nadine Y. Washington,  
Assistant Secretary.  
[FR Doc. 88-20936 Filed 9-13-88; 8:45 am]  
BILLING CODE 6720-01-M

[No. 88-947]

### Power of Receiver and Conduct of Receiverships; Reps, Financial Contracts, and Special Accounts

Date: September 9, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Home Loan Bank Board is supplementing earlier resolutions concerning American Savings and Loan Association, Stockton, California ("American"), to provide that the protections afforded to certain persons and entities engaged in certain transactions with American will be afforded to such persons or entities engaged in similar transactions with American Savings, a Federal Savings and Loan Association, to which substantially all of the assets and liabilities of American were transferred by the Federal Savings and Loan Insurance Corporation as receiver for American.

**EFFECTIVE DATE:** September 9, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; or Deborah E. Siegel, Attorney, Office of General Counsel, (202) 377-6848; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Board has adopted the following resolution:

Whereas, the Federal Home Loan Bank Board ("Board"), by its Resolution No. 88-924, dated September 5, 1988, appointed the Federal Savings and Loan Insurance Corporation ("Corporation") as receiver ("Receiver") for American Savings and Loan Association, Stockton, California ("American"), and pursuant to an Acquisition Agreement, dated September 6, 1988, between the Receiver and American Savings, a Federal Savings and Loan Association ("American Federal"), the Receiver transferred substantially all of the assets and liabilities of American to American Federal, all as more fully set forth in such Acquisition Agreement; and

Whereas, the Board has previously adopted Resolutions Nos. 88-149, and

88-463, regarding "Repo Resolutions" and the "Financial Contracts" of American (respectively, the "Repos" and "Financial Contracts Resolutions"); and

Whereas, the Board has previously adopted Resolution No. 88-29, regarding "special accounts" of insured institutions, and the Executive Director of the Corporation issued certain commitments, in accordance with that Resolution, regarding "special accounts" of American in a letter to Mr. William Popejoy dated June 27, 1988 (including Annex A and Schedule A thereto) (collectively, the "CD Commitment"); and

Whereas, the Board desires to supplement the Repo Resolutions, the Financial Contracts Resolutions and the CD Commitment (which supplementation the Board does not consider to be an amendment or rescission of such Resolutions and Commitment) to take into account the transfer of American's assets and liabilities to American Federal and to provide the same protections and commitments to counterparties to Repos and Financial Contracts with, and holders of special accounts in, American Federal.

Now, therefore, the Board resolves as follows:

1. All references in the Repo Resolutions, the Financial Contracts Resolutions and the CD Commitment to "American" and "American Savings" shall also be references to American Federal.

2. These resolutions shall be effective immediately upon their adoption by the Board.

3. The Secretary of the Board shall forward these resolutions for publication in the **Federal Register**.

By the Federal Home Loan Bank Board,  
John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 88-20958 Filed 9-13-88; 8:45 am]  
BILLING CODE 6720-01-M

### FEDERAL MARITIME COMMISSION Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal



Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.:** 224-010749-002

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Yangming Marine Transport Corporation

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-010749 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-200103-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
A/S Ivarans Rederi

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-200103 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-200137

**Title:** Georgia Ports Authority Lease Agreement

**Parties:**

Georgia Ports Authority  
Jugolinija

**Synopsis:** The agreement provides for the lease of paved premises to be used only for the storage and handling of containers, trailers and chassis located within Containerport at the Garden City Terminal, Port of Savannah.

**Agreement No.:** 224-200047-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Hapag-Lloyd A.G.  
Gulf Container Line BV  
Compagnie Generale Maritime

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-200047 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-011090-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Chilena de Navegacion Interoceanica S.A. (CCNI)

**Synopsis:** The proposed agreement modifies the rate schedule of

Agreement No. 224-011090 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-010954-002

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Mitsui OSK Lines, Nippon Yusen Kaisha and Yamashita-Shinnihon Steamship Co., Ltd.

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-010954 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-010906-002

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
United Arab Shipping Company

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-010906 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-010880-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Hanjin Container Lines, Ltd.

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-010880 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-010862-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Scanbarber, A/S

**Synopsis:** The proposed agreement modifies the rate schedule of Agreement No. 224-010862 and increases rates pursuant to clauses in that agreement.

**Agreement No.:** 224-200102-001

**Title:** Georgia Ports Authority Terminal Agreement

**Parties:**

Georgia Ports Authority  
Ocean Star Container Line

**Synopsis:** The proposed agreement modifies the rates schedule of Agreement No. 224-200102 and increases rates pursuant to clauses in that agreement.

By Order of the Federal Maritime Commission.

Dated: September 9, 1988.

Joseph C. Polking,  
Secretary.

[FR Doc. 88-20924 Filed 9-13-88; 8:45 am]

BILLING CODE 6730-01-M

# Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Special Expeditions, Inc., 720 Fifth Avenue, New York, New York 10019  
Vessel: Polaris

Date: September 9, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20878 Filed 9-13-88; 8:45 am]

BILLING CODE 6730-01-M

# Security for the Protection of the Public to Meet Liability Incurred for Death or Injury to Passengers on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Special Expeditions, Inc./ Master Mariner A.B./Dry Cargo Shipping, Ltd., 720 Fifth Avenue, New York, New York 10019

Vessel: Polaris

Date: September 9, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20879 Filed 9-13-88; 8:45 am]

BILLING CODE 6730-01-M

# FEDERAL RESERVE SYSTEM

## Fleet Norstar Financial Group, Inc.; Formation of, Acquisition by, or Merger and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities



of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing in this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 1988.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island, through *Fleet Bancorp of New Hampshire, Inc.*, New Hampshire; to acquire up to 100 percent of the voting shares of *Indian Head Banks, Inc.*, Nashua, New Hampshire, and thereby indirectly acquire *Indian Head National Bank*, Nashua, New Hampshire; *Indian Head National Bank of Keene, Keene, New Hampshire*; *Indian Head Bank and Trust Company*, Portsmouth, New Hampshire; *Indian Head Bank North, Littleton, New Hampshire*; *Dartmouth National Corporation*, Nashua, New Hampshire;

and *Dartmouth National Bank, Hanover, New Hampshire*.

In connection with this application, *Fleet/Norstar Financial Group, Inc.* has also applied to acquire *Indian Head Mortgage Corporation*, Nashua, New Hampshire, and thereby engage in originating and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y and acting as agent in the sale of mortgage life and mortgage disability insurance to its borrowers pursuant to § 225.25(b)(8) of the Board's Regulation Y.

*Fleet/Norstar Financial Group* has applied to acquire *Indian Head Data Services, Inc.*, Nashua, New Hampshire, and thereby engage *de novo* in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y and *Indian Head Bank Services Corporation*, Nashua, New Hampshire, and thereby engage *de novo* in offering management consulting services to unaffiliated depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y and offering in-house developed software for sale to unaffiliated persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20866 Filed 9-13-88; 8:45 am]

BILLING CODE 6210-01-M

#### **Peoples Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 7, 1988.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Bancorp, Inc.*, Marietta, Ohio; to acquire 7.65 percent of the voting shares of *Heartland Bancorp*, Grove City, Ohio, and thereby indirectly acquire *The Croton Bank Company*, Johnstown, Ohio.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Indecorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of *Drexel Holding Company*, Oak Park, Illinois, and thereby indirectly acquire *Drexel National Bank*, Chicago, Illinois.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222.

1. *Firstshares of Texas, Inc.*, Marshall, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of *The First National Bank of Marshall*, Marshall, Texas.

Board of Governors of the Federal Reserve System, September 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20866 Filed 9-13-88; 8:45 am]

BILLING CODE 6210-01-M

#### **Wisdom Holding Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the



question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 1988.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wisdom Holding Corporation*, Salem, Missouri; to acquire *Wisdom & Merrell Insurance Agency, Inc.*, Rolla, Missouri, and *Your Insurance Man Agency, Inc.*, Salem, Missouri; and thereby engage in operating a general insurance agency in a town with population less than 5,000 by a bank holding company with consolidated assets less than \$50 million, pursuant to §§ 225.25(b)(8)(iii)(A), and 225.25(b)(8)(vi) of the Board's of Regulation Y. *Wisdom & Merrell Insurance Agency, Inc.* will operate in Pulaski and Phelps Counties, Missouri, and *Your Insurance Man Agency, Inc.* will operate in Dent and Reynolds Counties, Missouri.

Board of Governors of the Federal Reserve System, September 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20867 Filed 9-13-88; 8:45 am]

BILLING CODE 6210-10-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87D-0413]

### Policy And Procedures Guide For Labeling of Animal Drugs That May Be Human Carcinogens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a labeling guide prepared by FDA's Center for Veterinary Medicine (CVM) for reviewers of new animal drug applications (NADA's). CVM Staff Manual Guide 1240.3140 concerns a statement that may be called for on the labeling of carcinogenic new animal drugs.

**ADDRESS:** Requests for single copies of CVM Staff Manual Guide 1240.3140 may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request.)

#### FOR FURTHER INFORMATION CONTACT:

Bob G. Griffith, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1963.

**SUPPLEMENTARY INFORMATION:** Although they are few in number, there may be new animal drugs that are suspect human carcinogens but that nevertheless merit approval. Approval of an NADA for such a drug is based in part on a determination that there is virtually no risk of human exposure from handling or administration when the drug is used in accordance with labeling directions.

Therefore, CVM has prepared for reviewers of NADA's CVM Staff Manual Guide 1240.3140, concerning labeling policy for animal drugs that may be human carcinogens. The purpose of CVM Staff Manual Guide 1240.3140 is to alert the reviewers of the need to assure safety to persons using such drugs by preventing human exposure from administration or careless handling. CVM Staff Manual Guide 1240.3140 does not address the issues of human food safety or target animal safety.

The policy providing for carcinogenesis and human warning statements may be applied whenever CVM determines there is evidence of carcinogenic activity based on the criteria included in the CVM Staff Manual Guide 1240.3140. If there is such evidence that a drug is an animal carcinogen, CVM regards the drug as a suspect human carcinogen.

The following prototype statement should be included in the labels and labeling of such drugs:

"Carcinogenesis:

(Name of drug)  
has been shown to cause cancer in

(Species)

(see human warnings)."

CVM Staff Manual Guide 1240.3140 will be used by CVM reviewers following publication of this notice in the *Federal Register* as they evaluate pending and future original and supplemental NADA's submitted for approval. The agency intends to initiate a notice-and-comment rulemaking proceeding to develop a regulation requiring the statement on the labeling of all previously approved products that are animal carcinogens as well as on the labeling of all such products that are or will be the subject of applications filed with CVM. In the meantime, CVM encourages manufacturers/sponsors of all currently approved products in this category to voluntarily place on product labeling the information discussed in CVM Staff Manual Guide 1240.3140. CVM also encourages manufacturers/sponsors of all new animal drug products in this category for which applications are or will be pending to submit for its review draft labeling incorporating that information.

CVM Staff Manual Guide 1240.3140 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of CVM Staff Manual Guide 1240.3140 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

Dated: August 31, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-20914 Filed 9-13-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0254]

### Establishment of the Therapeutic Inequivalence Action Coordinating Committee; Availability of Committee Reports

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of the Therapeutic Inequivalence Action Coordinating Committee (TIACC) and the availability of committee reports. TIACC is a committee within FDA's Center for Drug Evaluation and Research (CDER) that reviews reports of drug product therapeutic failure and other adverse drug reactions arising from the substitution of drug products. Where appropriate, TIACC initiates



investigations and issues committee reports on its findings.

**ADDRESSES:** Copies of the committee reports are available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written requests for copies of the reports to the Freedom of Information Staff (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donald B. Hare, Center for Drug Evaluation and Research (HFD-203), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA has long been concerned about maintaining the quality and therapeutic equivalence of multisource drug products. With the passage of the Drug Price Competition and Patent Term Restoration Act of 1984, which provides for the abbreviated new drug application (ANDA) process to be extended to large numbers of generic copies of approved drug products, a controversy regarding the safety and comparable effectiveness of these generic copies arose. In an effort to provide a forum for all interested persons to express their views on this and other issues relating to the bioequivalence of solid oral dosage forms, FDA sponsored a public hearing from September 29 to October 1, 1986 (bioequivalence hearing). A major concern expressed at the bioequivalence hearing was the ability of the current adverse drug reaction (ADR) reporting system to detect therapeutic failures of drug products. The agency established a Task Force to evaluate the recommendations made at the hearing. The Task Force released its report on February 29, 1988 (53 FR 6036). The Task Force report recommended that FDA improve agency procedures to detect and evaluate reports of drug product therapeutic failure that could be indicative of product inequivalence. In response to the Task Force recommendation, FDA established TIACC, a special committee in CDER, to evaluate reports of clinical failure attributed to switching from one brand of drug product to another that is rated therapeutically equivalent to the first, including reports of no drug effect and reports of toxicity. Drug products considered therapeutically equivalent

by FDA are rated AA, AB, AN, AO, AP, or AT in FDA's publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (commonly known as the "Orange Book").

##### II. TIACC's Procedures and Responsibilities

TIACC is composed of scientific and regulatory staff from four offices within CDER: The Office of Drug Standards, the Office of Epidemiology and Biostatistics, the Office of Compliance, and the Office of Research Resources. TIACC conducts the agency's review and evaluation of reports of therapeutic failure and toxicity of multisource drug products and issues committee reports on its findings. TIACC meets monthly; it may also meet more often when it has significant reports to review. Below is a brief summary of how the units within TIACC monitor and evaluate reports of therapeutic failure.

The Office of Drug Standards chairs the meetings, monitors the literature and other sources to identify instances of potential therapeutic inequivalence, and has overall responsibility for the committee. It may also evaluate reports regarding bioequivalence and other areas within its expertise.

The Office of Epidemiology and Biostatistics monitors ADR's to identify clusters of reports and reports with documented plasma level data. In addition, the office analyzes quarterly reports of ADR's describing therapeutic failures or toxicity. The office also collects ADR's from each participating unit of TIACC, evaluates each report, and decides which reports merit further investigation by TIACC.

The Office of Compliance monitors drug product problem reports which are submitted under a program designed to encourage reports from practitioners and others regarding product problems that may affect the drug product, including problems with labeling, packaging, and product potency. This office generally initiates field investigations when TIACC deems it appropriate.

The Office of Research Resources monitors the literature for published reports of therapeutic failure or toxicity, acts as Executive Secretary to TIACC, and prepares meeting agendas, minutes, and committee reports.

##### III. Availability of Reports

TIACC will prepare a written report of its findings and recommendations for action for each report of therapeutic failure or toxicity for which an

investigation is conducted. These reports are available to the public for review at the Dockets Management Branch (address above) from 9 a.m. to 4 p.m., Monday through Friday. Requests for copies of the reports may be obtained under the Freedom of Information Act. Submit written requests to the Freedom of Information Staff, address above. TIACC has placed all the written reports it has prepared in the public file, including the following:

Phenytoin toxicity—dated February 11, 1988;

Therapeutic failure of generic Primidone—dated February 29, 1988.

Reports drafted in the future will be placed in this public docket under the docket number found in brackets in the heading of this document for interested persons to review. The agency does not plan to announce the filing of each report in the Federal Register.

Dated: September 2, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-20915 Filed 9-13-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0324]

#### Drug Export; Minipress® XL Tablets (Prazosin Hydrochloride)

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Pfizer Pharmaceuticals has filed an application requesting approval for the export of the human drug Minipress® XL Tablets (prazosin hydrochloride) to France.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food,



Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Pfizer Pharmaceuticals, Pfizer, Inc., 235 E. 42nd St., New York, NY 10017, has filed an application requesting approval for the export of the human drug Minipress® XL Tablets (prazosin hydrochloride), to France. This product is indicated for the treatment of hypertension. The application was received and filed in the Center for Drug Evaluation and Research on August 29, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 26, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: September 7, 1988.

Daniel Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-20913 Filed 9-13-88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-150-08-4830-11]

#### National Public Lands Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the National Public Lands Advisory Council.

**SUMMARY:** Notice is hereby given that the National Public Lands Advisory Council will meet October 13-15, 1988, at the Sheraton Hotel, 750 N. St. Francis Drive, Santa Fe, New Mexico. The meeting hours will be 8:00 a.m. to 5:00 p.m. on Thursday, the 13th, 9:00 a.m. to 5:00 p.m. on Friday, the 14th, and 8:00 a.m. to 12:00 p.m. on Saturday, the 15th. The proposed agenda for the meeting is:

*Thursday, October 13:* Morning: Overview of BLM program accomplishments in the 80's; Address by Interior Department's Assistant Secretary for Land and Minerals Management; Council old and new business, to include Department responses to previous Council resolutions, status report on the wild horse and burro program, and discussion of future Council meetings and activities; Meeting of Council Subcommittees.

Afternoon: Public statement period; Meeting of Council Subcommittees.

*Friday, October 14:* Morning: The State view of public land management in New Mexico; Resolution of Navajo land tenure problems; Presentation on New Mexico water issues; Update on Land Information System (LIS) accomplishments; Meeting of Council Subcommittees.

Afternoon: Meeting of Council Subcommittees.

*Saturday, October 15:* Final meetings of Council Subcommittees; Reports from Subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Thursday, October 13. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written comments by October 6 to the Bureau of Land Management's New Mexico State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

**DATES:** October 13-15—Council Meeting, October 13—Public Statements.

**ADDRESS:** Copies of public statements should be mailed by October 6 to: Director, New Mexico State Office (912), Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Karen Slater, Washington, D.C. Office, BLM, telephone (202) 343-5101; or Lynda Dubrow, New Mexico State Office, BLM, telephone (505) 988-6316.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Robert F. Burford,  
Director.

September 9, 1988.

[FR Doc. 88-20964 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-930-08-4220-10; WYW 109115]

#### Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 9,609.74 acres of public and private surface from mineral location to protect the Whiskey Mountain Bighorn Sheep Winter Range. This notice closes the land for up to 2 years from mineral location. The land will remain open to surface entry and mineral leasing.

**DATE:** Comments and request for a public meeting must be received by December 13, 1988.

**ADDRESS:** Comments and requests for a meeting should be sent to the Wyoming State Director, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

**FOR FURTHER INFORMATION CONTACT:** Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, (307) 772-2072.

**SUPPLEMENTARY INFORMATION:** On August 31, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public and private land from location or entry under the general mining laws, subject to valid existing rights:

Sixth Principal Meridian.

T. 39 N., R. 105 W.,



Sec. 4, all, unsurveyed.  
 T. 40 N., R. 105 W.,  
 Sec. 17, W $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 18, S $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 S $\frac{1}{2}$ ;  
 Sec. 19, all;  
 Sec. 20, W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , SE $\frac{1}{4}$ ;  
 Sec. 21, SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 28, NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 29, all;  
 Sec. 33, Lots 1-4, W $\frac{1}{2}$ ;  
 T. 40 N., R. 106 W.,  
 Sec. 2, lots 3, 4;  
 Sec. 3, lots 1, 4;  
 Sec. 10, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
 Sec. 11, Lots 3, 4, 5, 9, NE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 14, lot 2, W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 N $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
 Sec. 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
 Sec. 22, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
 T. 41 N., R. 106 W.,  
 Sec. 19, lots 2, 3, 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 20, N $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 29, S $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
 Sec. 30, lots 1-4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , SE $\frac{1}{4}$ ;  
 Sec. 31, lots 5-20;  
 Sec. 32, lots 1-16;  
 Sec. 33, W $\frac{1}{2}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 S $\frac{1}{2}$ ;  
 Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$ .  
 T. 41 N., R. 107 W.,  
 Sec. 23, S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 24, S $\frac{1}{2}$ ;  
 Sec. 25, E $\frac{1}{2}$ E $\frac{1}{2}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

The areas described, which include both public and private surface estate and Federal mineral estate, aggregate 9,609.74 acres.

The purpose of the proposed withdrawal is to protect the Whiskey Mountain Bighorn Sheep Winter Range. The area contains one of the largest and most visible bighorn sheep populations in North America.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register*, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are only those discretionary land use authorizations of a temporary nature which are allowed by an authorized officer of the Bureau of Land Management.

Date: September 8, 1988.

David J. Walter,

Acting State Director

[FR Doc. 88-20895 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-22-M

[UT-040-08-4322-02]

#### Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Public Law 992-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, October 20, 1988. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 176 East DL Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Election of Advisory Board Officers; (2) Review of Current Advisory Board Charter; (3) Review of new billing requirements; (4) Report on recently completed AMPs; (5) Report on use of FY88 range improvement funds; and (6) General Advisory Board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720, phone (801) 586-2401, by October 17, 1988. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Ronald A. Montagna,  
 Acting District Manager.

September 6, 1988.

[FR Doc. 88-20925 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-020-08-4050-90]

#### California: Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 (FLPMA), that a District Advisory Council meeting will be held on Wednesday and Thursday, October 12 and 13, 1988. The meetings will begin on Wednesday, October 12, 1988 at 10:00 a.m., Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California 96130 and end 3:00 p.m. on Thursday, October 13, 1988. The agenda will include discussion on the East Lassen Deer Herd, Bighorn reintroductions, the Wild Horse and Burro Program, Malacha Hydro-Electric Project, Ft. Sage OHV Project, Wilderness Program and the Silver State Water Project. The meeting is open to the public and interested persons may make oral statements to the Council or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, by October 5, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Council meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:  
 John Tyson, Public Affairs Officer, at 916-257-5381.

C. Rex Cleary,

District Manager.

[FR Doc. 88-20927 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-40-M

#### Office of Surface Mining Reclamation and Enforcement

##### Availability of Decision and Statement of Reasons for Decision on Black Diamond Unsuitability Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Availability of decision and statement of reasons for decision on Black Diamond Unsuitability Petition.

SUMMARY: The Director of the Office of Surface Mining Reclamation and



Enforcement (OSMRE) has reached a decision on a petition to designate lands as unsuitable for surface coal mining operations in the Black Diamond area of Washington.

**ADDRESSES:** Copies of the Statement of Decision and the Statement of Reasons for the decision may be obtained from Duane H. Gentz, Western Field Operations, Office of Surface Mining Reclamation and Enforcement, Brooks Towers, 1020 15th Street, Denver, Colorado 80202; telephone (303) 844-2939 and Glenn C. Waugh, Office of Surface Mining Reclamation and Enforcement, Columbia Commons, 3773 C Martin Way East, Suite 104, Olympia, Washington 98506; telephone (206) 753-9538.

**FOR FURTHER INFORMATION CONTACT:** Duane H. Gentz, Office of Surface Mining Reclamation and Enforcement, Brooks Towers, 1020 15th Street, Denver, Colorado 80202; telephone (303) 844-2939.

**SUPPLEMENTARY INFORMATION:** On April 6, 1984, the Citizens Concerned About Strip Mining filed with OSMRE a petition to have approximately 800 acres of privately owned land immediately adjacent to the city of Black Diamond in King County, Washington, designated unsuitable for surface coal mining operations. The petition alleges that surface coal mining operations in the Black Diamond petition area would be unsuitable (1) on natural-hazard lands, (2) on fragile lands, and (3) in close proximity to population. It further requests that OSMRE (1) accept and process the petition as it relates to Pacific Coast Coal Company's (PCCC's) proposed John Henry No. 1 mine permit area and (2) enforce the buffer zones surrounding abandoned underground mines, public roads, and dwellings in the vicinity of the proposed operations.

In accordance with Federal regulations (30 CFR 947.764 and 30 CFR 764.15(a)(7)) on May 25, 1984, OSMRE decided not to process the petition as it relates to that portion of the petition area that includes PCCC's proposed John Henry No. 1 mine permit area. On July 13, 1984, OSMRE determined the petition as it relates to the remainder of the petition area (472 acres; hereinafter the "curtailed petition area") to be complete.

Pursuant to 30 CFR Part 947.764, OSMRE analyzed the allegations of the petition. In March 1986, OSMRE completed a draft of the Black Diamond Petition Evaluation Document/Environmental Impact Statement (PED/EIS). OSMRE published notice of the availability of this document and of its intent to hold a public hearing to receive

comments on the petition and draft document in the March 28, 1986, *Federal Register* (51 FR 10679). The Environmental Protection Agency also published notice of the draft PED/EIS in the April 4, 1986, *Federal Register* (51 FR 10640). OSMRE held a public hearing on the petition and draft PED/EIS at Black Diamond, Washington, on April 29, 1986.

A copy of the Statement of Decision signed by the Director appears as an appendix to this notice. Additional copies of the Statement of Decision and copies of the Statement of Reasons (not attached to this notice) are available at no cost from the offices listed above under **ADDRESSES**. OSMRE has sent copies of these documents to all interested parties of record.

Additional information on this petition may be found in *Federal Register* notices on August 15, 1984 (notice of complete petition for designation of land as unsuitable for surface coal mining operations and request for comments; 49 FR 32686) and May 8, 1985 (intent to prepare a combined unsuitability petition evaluation document/environmental impact statement; 50 FR 19495). A notice of availability of the final PED/EIS was published in the *Federal Register* on November 20, 1987 (52 FR 44643).

Date: August 30, 1988.

**Robert E. Boldt,**

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

**Petition To Designate Certain Non-Federal Lands, Known as the Black Diamond Area, in King County, Washington, Unsuitable for Surface Coal Mining Operations**

#### *Statement of Decision*

Under Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA, 30 U.S.C. 1272), the Office of Surface Mining Reclamation and Enforcement (OSMRE) was petitioned by the Citizens Concerned About Strip Mining (CCASM) to designate certain non-Federal lands adjacent to the City of Black Diamond in King County, Washington, as unsuitable for all types of surface coal mining operations. Meridian Minerals Company, one of the mineral rights owners within the curtailed petition area, and Pacific Coast Coal Company (PCCC), the John Henry No. 1 mine permit applicant, also within the curtailed petition area, intervened in opposition to this petition.

Because the petition was received after OSMRE had determined that a permit application for a proposed surface coal mining and reclamation operation within the petition area was administratively complete, and after the applicant had published a notice of completeness, OSMRE decided to process CCASM's petition only as it relates to about 472 acres within the petition area, but outside of PCCC's proposed John Henry No. 1 mine permit area. For purposes of

processing the petition, OSMRE called these 472 acres "the curtailed petition area."

As required by sections 552(c) and 522(d) of SMCRA, OSMRE sought public comment on CCASM's petition. OSMRE held a public hearing regarding the petition in Black Diamond, Washington, which is located near the curtailed petition area. OSMRE also prepared a detailed petition document/environmental impact statement (PED/EIS, or PE-7 and EIS-21) evaluating the petition and all reasonable decision alternatives.

In reaching my decision on the Black Diamond unsuitability petition, I have considered all of the information in the administrative record for this proceeding, including the PED/EIS, as well as information provided by the petitioners, the intervenors, government agencies, the State of Washington, industry, and the public. Based upon this information, I have reached the following decision:

1. I find that there is insufficient evidence to support the petitioners' allegations that coal mining is unsuitable on natural-hazard lands within the curtailed petition area, and that the mining in the curtailed petition area would (1) cause underground coal mines in the areas to subside, adversely affecting residences through subsidence, exposure to escaping gas, and contamination of water; (2) increase seismic activity, which presents a natural hazard to structures and hydrology and which releases contaminated water onto adjacent land; (3) increase the possibility of catastrophes, which could result from flooding associated with unstable land that is mined (the curtailed petition area is unique for its hydrologic balance and makeup); and (4) increase the chances of erosion in portions of the area because of soil types.

2. I find, as the petitioners allege, that Lake No. 12, within the curtailed petition area constitutes fragile lands, is protected by State law, and is of a high environmental and recreational value and quality which would be adversely affected by surface coal mining operations. Also, mining would not be compatible with the present zoning (for general or forestry-and-recreation use) for the area. In accordance with Sections 522(a)(3) (A) and (B), of SMCRA, respectively, the decision whether to designate lands on which mining would be incompatible with present zoning, as well as fragile lands, unsuitable for certain types of surface coal mining operations is subject to my discretion.

3. Exercising this discretion, I designate Lake No. 12 within the Black Diamond curtailed petition area (delineated on figure 1-2 of OSMRE PE-7 and EIS-21) as unsuitable for surface coal mining operations. I am not designating the area surrounding Lake No. 12 because that area is protected by the Washington Shoreline Management Act and the King County shoreline-master program, which combined with the intensive public opposition to such operations in the adjacent area would preclude surface coal mining operations. In addition, SMCRA would preclude mining near structures and roads found throughout this area.

4. The petition contends that surface coal mining operations would be unsuitable in close proximity to population in the vicinity



of the curtailed petition area. Federal law and regulations do not establish proximity to population as a criterion for designating an area unsuitable for surface coal mining operations. However, an area may be designated as unsuitable if such operations would be incompatible with State or local land-use plans.

5. The eastern tip of the curtailed petition area, which is about 10 acres in size, falls within the Green River Gorge Conservation Area, which is recognized as a unique recreational attraction. The Washington State Parks and Recreation Commission has been directed by State law (CW 43.51.900 through 43.51.930) to acquire all lands within this conservation area. Mining in this approximately 10-acre eastern tip of the curtailed petition area would conflict with existing local land-use plans for the 10 acres, which specify that they be used for general use or forestry and recreation, not for quarrying and mining. In accordance with Section 522(a) of SMCRA, the decision whether to designate lands that are incompatible with existing State or local land-use plans as unsuitable for surface coal mining operation is subject to my discretion.

6. Exercising this discretion, I also designate that portion of the eastern tip of the curtailed petition area that is within the Green River Gorge Conservation Area (delineated on figure 1-2 of OSMRE PE-7 and EIS-21) as unsuitable for surface coal mining.

7. Allegation No. 4 of the petition addresses the proposed John Henry No. 1 mine permit area only. It consists of requests and allegations urging that OSMRE (1) accept and process the petition as it relates to the proposed permit area; and (2) enforce the buffer zone surrounding abandoned underground mines, public roads, and dwellings in the area. Because OSMRE has already rejected the petition as it relates to the portion of the petition area that coincides with this originally proposed but now approved permit area, allegation No. 4 is beyond the scope of this decision.

8. OSMRE regulations at 30 CFR 947.764.25(a) specify that a regulatory authority shall not issue permits that are inconsistent with designations made pursuant to Part 761, 762, or 764. Therefore, any mining resulting from permits issued to mine coal underlying the curtailed petition area shall not cause a degradation of those portions of the area that are declared unsuitable for surface coal mining operations.

9. My *STATEMENT OF REASONS*, which accompanies this decision, explains the bases for my decision to designate Lake No. 12 and that portion of the eastern tip of the curtailed petition area that is within the Green River Gorge Conservation Area as unsuitable for either surface or underground coal mining operations, and not to designate any other portions of the area as unsuitable for such operations. This decision is final on the date it is signed. Any appeal of this decision must be filed within 60 days of that date in the United States District Court for the Western District of Washington, as provided in Section 526(a)(1) of SMCRA. Copies of this decision will be sent by certified mail to all parties to this proceeding.

Date: July 22, 1988.

Robert E. Boldt,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-20881 Filed 9-13-88; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, IRM/PE, Room 1109, SA-14, Washington, DC. 20523.

Date Submitted: September 1, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0532.

Type of Submission: Revision of Currently Approved Collection.

Title: Training Cost Analysis (TCA) System.

Purpose: The Agency for International Development (A.I.D.) provides training in the U.S. for well over 15,000 students each year from Third World Countries. These "A.I.D. Participants" and their training programs are managed by 200 contractors. Contracts are let by A.I.D. Missions overseas, central and regional bureaus in Washington, DC, and the Office of International Training. The Agency has now developed a project management system which will standardize most aspects of the participant training process, including the definition of training activities to be provided by contractors for A.I.D. Participants; the submission of cost proposals in response to an RFP which identifies the costs of those services; and a cost reporting system which enables project managers to assure that contractors are keeping within their proposed budgets. Respondents to an RFP will have a submission burden of one and a contractor will have an annual submission burden of four.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget,

Room 3201, New Executive Office Building, Washington, DC 20503.

Date: September 1, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-20929 Filed 9-13-88; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Settlement Agreement; Allis-Chalmers Corp.

Notice is hereby given that a proposed settlement agreement in *In re Allis-Chalmers Corporation*, (Bankr. S.D.N.Y.) Case Nos. 87 B 11225 Through 87 B 11242 (Inclusive), has been reached between the United States, on behalf of the Environmental Protection Agency, and the Allis-Chalmers Corporation and related entities, which are reorganizing under Chapter 11 of the Bankruptcy Code. Under the terms of the settlement EPA covenants not to sue Allis-Chalmers Corporation, its subsidiaries and related entities, and the reorganized Allis-Chalmers Corporation for environmental claims under the Comprehensive Environmental Response, Compensation, and Liability Act and other environmental statutes with respect to twenty-one sites, none of which is owned by Allis-Chalmers, in exchange for a payment of \$4.5 million, to be paid by Allis-Chalmers upon conformation of Allis-Chalmers' plan of reorganization.

The Department of Justice will receive comments relating to the proposed settlement agreement through September 26, 1988. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Allis-Chalmers Corporation*, (Bankr. S.D.N.Y.), Ref. No. 90-11-2-342. The proposed settlement agreement may be examined at the Office of the United States Attorney for the Southern District of New York, One St. Andrews Plaza, New York, New York 10007. A copy of this settlement agreement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.70 for reproduction cost,



payable to the Treasurer of the United States.

Richard J. Leon,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-21026 Filed 9-13-88; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree; Ribco Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 17, 1988, a proposed Consent Decree in *United States v. Ribco Industries, Inc.*, (D.R.I.) was lodged with the United States District Court for the District of Rhode Island. The proposed Consent Decree concerns a lawsuit filed under the Federal Water Pollution Control Act, 33 U.S.C. 1257-1376. The proposed Consent Decree requires the defendant to pay a civil penalty to the United States and to the State of Rhode Island in a total amount of \$125,000. The proposed Consent Decree also contains requirements for the defendant to conduct extensive sampling and monitoring of its wastewater discharges. The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ribco Industries, Inc.*, DJ Ref. 90-5-1-1-3131.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Rhode Island, 223 Federal Building & Courthouse, Kennedy Plaza, Providence, Rhode Island 02930, and at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts, 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$2.40 (10 cents per page

reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-20926 Filed 9-13-88; 8:45 am]

BILLING CODE 4410-01-M

#### Federal Bureau of Prisons

##### Intention To Prepare a Draft Environmental Impact Statement for the Construction of a Federal Correctional Institution in Greenville, Bond County, IL

**AGENCY:** Federal Bureau of Prisons, Department of Justice.

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

#### SUMMARY:

1. *Proposed Action:* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal correctional facility with an adjacent satellite prison camp is needed in its system. A 215 acre tract of land immediately south of the City of Greenville bounded by U.S. Highway 40 on the north, Route 1255 on the East and Route 1175 on the west will be evaluated. The proposal calls for the construction of facilities to house approximately 250 minimum, and 656 medium security inmates.

Approximately 100 of the 215 acres would be used for road access, inmates housing, administration and program spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

2. *In the process of evaluating the tract of land, several aspects will receive a detailed examination including:* utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. *Alternatives:* In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. *Scoping Process:* During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Greenville. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be

continued by representatives of the Bureau of Prisons with interested community leaders and officials.

5. *DEIS Preparation:* Public notice will be given concerning the availability of the DEIS for public review and comment.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Patricia K. Sledge, Site Acquisition Coordinator, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272-6534.

Date: September 8, 1988.

William J. Patrick,

Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 88-20860 Filed 9-13-88; 8:45 am]

BILLING CODE 4410-05-M

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; APV Chemical Machinery Inc, et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 26, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment



Assistance, at the address shown below, not later than September 26, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment

Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D street, NW., Washington, DC 20213.

Signed at Washington, DC, this 6th day of September 1988.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

## APPENDIX

Petitioner: (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
APV Chemical Machinery Inc. (Workers)	Saginaw, MI	9/6/88	8/24/88	20,909	Chemical machinery.
Amistad Fuel Co. (Workers)	Rockwood, TX	9/6/88	8/23/88	20,910	Coal.
Bethlehem Steel Corp. Steelton, Plant (USWA)	Steelton, PA	9/6/88	8/22/88	20,911	Rail accessories.
Champion International Corp. (LPIW)	Bonner, MT	9/6/88	8/23/88	20,912	Wood products.
CIBA-GEIGY Corp. (Company)	Toms River, NJ	9/6/88	8/15/88	20,913	Dye stuffs, plastic resins and plastic additives.
Cincinnati Microwave (Workers)	Cincinnati, OH	9/6/88	7/31/88	20,914	Radar detectors.
Dikmar, Ltd. (ILGWU)	Perth Amboy, NJ	9/6/88	8/22/88	20,915	Bridal wear.
GI GI Fashions (ILGWU)	Howell, NJ	9/6/88	8/22/88	20,916	Ladies' sportswear.
Goldstar Hat & Cap Co. (ACTWU)	Union City, NJ	9/6/88	8/22/88	20,917	Hats and caps.
H.H. Robertson, Co. (USWA)	Ambridge, PA	9/6/88	8/26/88	20,918	Metal building products.
International Shoe Co. (ACTWU)	St. Louis, MO	9/6/88	8/23/88	20,919	Materials for shoes.
Kidd Automated Systems (ACTWU)	Pawcatuck, CT	9/6/88	8/25/88	20,920	Printed circuit boards.
LB Simmons Energy, Inc. dba Rocket Oil (Workers)	Ratliff City, OK	9/6/88	8/23/88	20,921	Oil.
Larance Engineering Co. (Company)	Wichita Falls, TX	9/6/88	8/15/88	20,922	Geologist for oil and gas industry.
M. Grossman & Sons (ACTWU)	Passaic, NJ	9/6/88	8/24/88	20,923	Millinery headwear.
Nikki Sportswear (ILGWU)	Long Branch, NJ	9/6/88	8/22/88	20,924	Ladies' dresses.
Pinebrook Hat Co., Inc. (ACTWU)	Jersey City, NJ	9/6/88	8/22/88	20,925	Ladies hats.
Randleman Mfg. Co. (Workers)	Woodlawn, NC	9/6/88	8/17/88	20,926	Men's and women's jeans.
Ray Holifield & Associates	Oklahoma City, TX	9/6/88	8/1/88	20,927	Oil and gas exploration and production.
Ray Holifield & Associates	Dallas, TX	9/6/88	8/1/88	20,928	Oil and gas exploration and production.
Roosevelt Mills, Inc. (Company)	Vernon, CT	9/6/88	8/15/88	20,929	Knitted sweaters.
Rig Supply, Inc. (Company)	Houston, TX	9/6/88	8/12/88	20,930	Oilfield pipe heading equipment.
Via Veneta Fashions, Inc. (ILGWU)	South River, NJ	9/6/88	8/22/88	20,931	Ladies' dresses.
Washington Industries Inc. (Workers)	Nashville, TN	9/6/88	8/23/88	20,932	Men's and women's apparel.

[FR Doc. 88-20948 Filed 9-13-88; 8:45 am]

BILLING CODE 4510-30-M

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Universal Food, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 29, 1988-September 2, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,787; Universal Food, Inc.,  
Schratter Imports Div., Carlstadt,  
NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,751; Avery Label Co., North  
Burnswick NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,794; Enron Corp. (Formerly  
Internorth, Inc.), Gas Pipeline  
Group, Omaha, NE

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,764; Safeway Stores, Inc.,  
Alamogordo, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,765; Safeway Stores, Inc.,  
Albuquerque, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,766; Safeway Stores, Inc.,  
Artesia, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,767; Safeway Stores, Inc.,  
Belen, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,768; Safeway Stores, Inc.,  
Carlsbad, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,769; Safeway Stores, Inc.,  
Clovis, NM



The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,770; Safeway Stores, Inc.,  
Deming, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,771; Safeway Stores, Inc.,  
Española, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,772; Safeway Stores, Inc.,  
Hobbs, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,773; Safeway Stores, Inc., Las  
Cruces, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,774; Safeway Stores, Inc., Las  
Vegas, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,775; Safeway Stores, Inc., Los  
Alamos, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,776; Safeway Stores, Inc.,  
Lovington, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,777; Safeway Stores, Inc.,  
Portales, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,778; Safeway Stores, Inc.,  
Roswell, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,779; Safeway Stores, Inc.,  
Ruisodo, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,780; Safeway Stores, Inc.,  
Sante Fe, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,781; Safeway Stores, Inc.,  
Silver City, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,782; Safeway Stores, Inc.,  
Socorro, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,783; Safeway Stores, Inc.,  
Taos, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,784; Safeway Stores, Inc.,  
Tucumcari, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

I hereby certify that the aforementioned determinations were issued during the period August 29, 1988-September 2, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 6, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment  
Assistance.

[FR Doc. 88-20949 Filed 9-13-88; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-498]

### Houston Lighting & Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-76, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1 located in Matagorda County, Texas.

The amendment would permit expansion of the spent fuel pool storage capacity by using high density spent fuel racks.

On June 23, 1988, the Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing for the South Texas Project, Unit 1 license (53 FR 23707). That Notice offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene.

Due to oversight, the June 23, 1988 Notice did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPAct), 42 U.S.C. 10154. Under section 134 of the NWPAct, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPAct are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of any order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as



well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, subpart G apply.

By October 14, 1988, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the proposed amendment or any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding, must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene seeking to invoke hybrid hearing procedure in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Request for hearing or petitions for leave to intervene which do not seek to invoke the hybrid hearing procedures are not authorized by this notice and would be considered nontimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification No. 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication

date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 8, 1988 as supplemented March 26, 1988, which is available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC and at the Wharton Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 9th day of September 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-21039 Filed 9-13-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26066; File No. SR-ARMEX-88-21]

### Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amendments of the Registered Trader Obligations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given



that on August 26, 1988, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the Proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Rule 958 as set forth below. *Italics* indicate material proposed to be added; [brackets] indicate material proposed to be deleted.

No Registered Trader shall initiate an Exchange option transaction on the Floor for any account in which he has an interest except in accordance with the following provisions:

(a)-(b) No change.

(c) With respect to each class of options to which he is assigned by the Exchange, a Registered Trader, whenever he enters the trading crowd in other than a floor brokerage capacity, or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, *is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a Registered Trader is expected to perform the following activities in the course of maintaining a fair and orderly market:*

(i) the underlying security is a stock, bidding and/or offering so as to create differences of no more than  $\frac{1}{4}$  of \$1 between the bid and the offer for each option contract for which the [last preceding transaction price was \$.50] *Prevailing bid is \$1 or less, no more than  $\frac{1}{2}$  of \$1 where the [last preceding transaction price was] prevailing bid is more than \$.50 \$1 but [did] does not exceed \$10 \$5, no more than  $\frac{1}{2}$  of \$1 where the prevailing bid is more than \$5 but does not exceed \$10, no more than  $\frac{1}{4}$  of \$1 where the [last preceding transaction price was] prevailing bid is more than \$10 but less than \$20, and no more than \$1 where the [last preceding*

transaction price was] *prevailing bid is \$20 or more;*

If the underlying security is a Treasury bill or certificate of deposit, bidding and/or offering so as to create differences in premium quotations of no more than 0.6 between the bid and the offer for each option contract for which the last preceding transaction price was 0.12 or less, no more than 0.12 where the last preceding transaction price was more than 0.12 but did not exceed 1.20, and no more than 0.16 where the last preceding transaction price was more than 1.20; and

If the underlying security is a Treasury bond or Treasury note, bidding and/or offering so as to create differences of no more than  $\frac{1}{4}$  of the principal amount of the underlying security between the bid and the offer for each option contract for which the last preceding transaction price was  $\frac{1}{4}$ % or less, no more than  $\frac{1}{4}$ % where the last preceding transaction price was more than  $\frac{1}{4}$ % but did not exceed 4%, and no more than  $\frac{3}{4}$ % where the last preceding transaction price was more than 4%.

Provided that the Exchange may establish differences other than the above for one or more series or classes of options. [The bid-ask differentials as stated above shall apply to all but the longest term series of options open for trading in each class. For these series, the bid-ask differentials shall be twice that stated above.]

(ii) No change.

(d)-(f) No Change.

(g) *A Registered Trader, when establishing or increasing an options position for any account in which he has an interest, must initiate such transactions on the floor for those transactions to be considered registered trader transactions.*

#### \* \* \* Commentary

.01 A Registered Trader electing to engage in Exchange options transactions is designated as a Specialist on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to options transactions initiated and effected by him on the floor in his capacity as a Registered Trader. For purposes of this rule and commentary, the term ["transactions initiated and effected"] "on the floor" [shall not include transactions initiated by a Registered Trader off the floor, but which are considered "on-floor" pursuant to Commentaries .02 and .03 of Rule 111.] *is defined as the area or areas designated by the Exchange as the place or places for the trading of stocks, bonds, options or other securities.*

.02 No change.

.03 The Exchange has determined (i) for purposes of paragraph (a) of this Rule that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of a Registered Trader shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) at the request of a Floor Official in non-assigned classes of options shall not be deemed trading in non-assigned option contracts. The Exchange may, in computing the percentage specified herein, assign a weighing factor based upon relative inactivity to one or more classes or series of options contracts[.];

(ii) *a minimum of 30% of a Registered Trader's option contract volume and a minimum of 30% of a Registered Trader's total number of options transactions in any quarter must be executed in person; and*

(iii) *a Registered Trader, whose option contract volume has exceeded 10,000 contracts in any quarter and where at least 60% of this volume was effected by transactions executed in person, will be eligible for a reduction of 10% of the trading activity requirement in Commentary .03(i) and will be eligible for an increase in the number of assigned option classes during the next quarter.*

.04-.08 No change.

.09 *A Registered Trader (or a commission broker representing a Registered Trader, pursuant to Rule 111 Commentary .04), prior to executing an order for an account in which he has an interest, must announce whether the order is a "trader opening" or "trader closing" order.*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.



**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The Exchange proposes to clarify the obligations of Registered Traders engaging in options transactions. Currently, Exchange Rule 958 sets forth the obligations of Registered Traders when initiating options transactions on the floor of the Exchange for accounts in which they have an interest. These obligations include, but are not limited to, contributing to the maintenance of fair and orderly markets, engaging in dealings for their own account under certain circumstances in those option classes to which they are assigned by the Exchange, and bidding and offering so as to keep the differences between the bids and offers within certain parameters.

Based on an ongoing analysis of the role of Registered Traders, the Exchange proposes the following rule amendments:

(1) *Rule 958(c)*: to clarify that when Registered Traders enter trading crowds, in other than a floor brokerage capacity, they be required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of fair and orderly markets;

(2) *Rule 958(c)(i)*: to narrow the maximum permissible spread between bids and offers for any options series and to eliminate the wider spread differentials that currently apply to the longest term options;

(3) *Rule 958(g) and Commentary .01*: to clarify that when Registered Traders initiate opening (increasing) transactions for accounts in which they have an interest that such transactions be entered and initiated on the trading floor, which is defined to include only those areas designated by the Exchange for the trading of stocks, bonds, options and other securities. In this regard, it should be noted that the trading floor does not include lounge areas, eating areas, information retrieval areas, designated smoking areas, the DK Room, Exchange staff offices, lobby areas or hallways connecting such areas with the trading floor;

(4) *Rule 958—Commentary .03(ii) and (iii)*: to establish that a minimum of 30% of a Registered Trader's quarterly contract volume and total number of options transactions be executed in person. Traders whose option contract volume has exceeded 10,000 contracts in any quarter and at least 60% of that volume was executed "in person" will become eligible for an increase in the number of assigned classes; and

(5) *Rule 958—Commentary .09*: to require Registered Traders, prior to executing an order in an account in which they have an interest, to announce whether the order is a "trader opening" or "trader closing" order.

The Exchange believes the proposed amendments will improve options price continuity, will result in more liquid markets and will clarify Registered Trader's obligations when maintaining a fair and orderly market. The proposal also provides for an increase in the number of assigned classes if the Registered Trader meets certain volume and trading criteria.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange in that it clarifies and defines the obligations of registered traders in the maintenance of a fair and orderly market.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The AMEX believes that the proposed rule change will not impose a burden on competition.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 7, 1988.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-20894 Filed 9-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC-16555; 812-7067]

**Charter National Life Insurance Co., et al.**

September 8, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act")

**Applicants:** Charter National Life Insurance Company ("Charter"), Charter National Variable Annuity Account ("Variable Account"), and CNL, Inc. ("CNL") (collectively, the "Applicants").

**Relevant 1940 Act Sections:** Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

**Summary of Application:** Applicants seek an order to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Variable Account in connection with certain flexible premium variable annuity contracts.

**FILING DATE:** The application was filed on July 11, 1988 and amended on August 22, 1988.

**Hearing or Notification of Hearing:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this



application or ask to be notified if the hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on October 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with the proof of service by affidavit, or, in the case of an attorney at law, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Charter National Life Insurance Company, 8301 Maryland Avenue, St. Louis, Missouri 63105.

**FOR FURTHER INFORMATION CONTACT:** Heidi Stam, Staff Attorney (202) 272-3017 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:**

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

**Applicants' Representations**

1. The Variable Account, a unit investment trust, was established by Charter as a separate account under the laws of the State of Missouri on May 15, 1987. Applicants propose to issue certain flexible premium variable deferred contracts ("Contracts") to be funded by the Variable Account.

2. The Variable Account currently has six subaccounts, each of which invests exclusively in the shares of a specific corresponding portfolio of the Scudder Variable Life Investment Fund (the "Fund"). The Fund is a diversified, open-end management investment company and was organized as a Massachusetts business trust on March 15, 1985.

3. Charter will impose a charge against the Contracts to compensate it for bearing certain mortality and expense risks under the Contracts. The mortality risk assumed by Charter arises from its contractual obligation to make annuity payments to each annuitant regardless of how long all annuitants or any individual annuitant may live. If the owner is living on the maturity date and the Contract is in force, annuity payments based on the rates guaranteed in the Contract will be made to the owner in accordance with the terms of the Contract and the annuity income option selected by the owner. The expense risk assumed by Charter is that

the actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, and costs of other services will exceed the amount recovered from the administrative expense and records maintenance charge. The mortality and expense risk charge will be deducted daily in an amount equal to an effective annual rate of .70% of the average daily net assets of the Variable Account attributable to the Contracts. Of that amount, approximately .50% is charged to cover the mortality risks and approximately .20% is charged for expense risks. The rate of this charge is guaranteed never to increase and is applicable only during the period from the effective date to the maturity date.

4. Charter will impose a charge against the Contract to compensate it for administration of the Contract and the Variable Account. This charge will be imposed daily against the net assets in each subaccount attributable to the Contracts at an effective annual rate of .30%. This rate is guaranteed not to increase for the duration of the Contract and is applicable only during the period from the effective date to the maturity date. In addition, a records maintenance charge of \$35 will be deducted from each Contract at the beginning of each Contract year to reflect the cost of performing record maintenance for the Contracts. Charter may increase the amount of the records maintenance charge to a maximum of \$40 per Contract year if Charter's cost in performing records maintenance increases.

5. No sales charges are deducted under the Contracts. All expenses relating to the sale of the Contracts will be paid by Charter from its general assets.

6. Charter represents that the charge of .70% per annum for mortality and expense risks assumed by Charter is within the range of industry practice with respect to comparable annuity products. This representation is based upon Charter's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Charter represents that it will maintain at its administrative office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Charter does not deduct a sales charge from payments invested in the

Contract or amounts paid upon full or partial surrender. Charter has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and owners. The basis for this conclusion is set forth in a memorandum which will be maintained by Charter at its administrative offices and will be available to the Commission.

8. Applicants represent that the Variable Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-20891 Filed 9-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16554; 812-7062]

**PaineWebber America Fund, et al.; Application**

September 8, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* PaineWebber America Fund, PaineWebber Atlas Fund, PaineWebber California Tax-Exempt Income Fund, PaineWebber Cashfund, Inc., PaineWebber Fixed Income Portfolios, PaineWebber Investment Series, PaineWebber Master Series, Inc., PaineWebber Municipal Series, PaineWebber Olympus Fund, PaineWebber RMA Money Fund, Inc., PaineWebber RMA Tax-Free Fund, Inc., PaineWebber Series Trust, PaineWebber Tax-Exempt Income Fund, and all future investment companies for which PaineWebber Incorporated or Mitchell Hutchins Asset Management Inc. serves as investment adviser.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of section 32(a)(1).

*Summary of Application:* Applicants seek an order to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors or trustees meeting held within



90 days before or after the beginning of each Applicant's fiscal year.

**Filing Date:** The application was filed on July 7, 1988.

**Hearing or Notification of Hearing:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 3, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Dianne E. O'Donnell, Esq., Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Jeremy N. Rubenstein, Staff Attorney (202) 272-2847, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicant's Representations

1. Each Applicant is an open-end investment company organized either as a corporation under the laws of the State of Maryland, or as a business trust under the laws of the Commonwealth of Massachusetts. Either PaineWebber Incorporated or Mitchell Hutchins Asset Management Inc. serves as investment adviser to each Applicant.

2. Each Applicant is governed by a board of directors or trustees ("Board"), each of which consists of six or seven persons, four of whom are not "interested persons" as defined in the 1940 Act. The non-interested Board members are identical for all of the Applicants.

3. State law does not normally require Applicants to hold annual shareholders' meetings. Regularly scheduled Board meetings are currently held on the same day for all of the Applicants in January, May, August and October each year. It is the usual practice to consider an issue

affecting more than one of the Applicants at the same meeting.

4. Applicants' respective fiscal year commencement dates are staggered as follows: January 1 (PaineWebber Series Trust); March 1 (PaineWebber Master Series, Inc. and PaineWebber Municipal Series); April 1 (PaineWebber Cashfund, Inc.); July 1 (PaineWebber RMA Money Fund, Inc. and PaineWebber RMA Tax-Free Fund, Inc.); September 1 (PaineWebber American Fund PaineWebber Investment Series); December 1 (PaineWebber California Tax-Exempt Income Fund, PaineWebber Fixed Income Portfolios and PaineWebber Tax-Exempt Income Fund).

5. The selection of independent public accountants is based on the recommendation of the Audit Committee of each Board. Each Audit Committee is composed of those Board members who are not "interested persons" as defined in the 1940 Act. Each Applicant currently employs one of two independent public accountants.

6. The application of section 32(a)(1), in light of Applicants' present fiscal years and meeting dates, would require three additional Board meetings for the sole purpose of selecting independent public accountants, because none of the regularly scheduled meetings falls within 30 days of the following fiscal year commencement dates: March 1, April 1, July 1 and December 1. If new funds with different fiscal years are established or meeting dates change, the requirement of section 32(a)(1) could become more onerous.

7. Each Applicant submits that it is desirable to consider the selection of its independent public accountant at the same time as the other Applicants during a regularly scheduled Board meeting. Expanding the 30 day window to 90 days would permit the Applicants to select accountants at one of two regularly scheduled Board meetings during the year. Applicants submit that it is preferable to avoid the extra expense, inconvenience and duplication of effort that would result from holding additional Board meetings solely for the purpose of selecting independent public accountants, as would be required if the 30 day window were not expanded.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20892 Filed 9-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24710]

#### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 8, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 3, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Middle South Utilities, Inc. et al. (70-7533)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its wholly owned-generating subsidiary, System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 and Middle South's other electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112 have filed a declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By Commission orders dated December 28, 1983 (HCAR No. 23148), June 28, 1984 (HCAR No. 23352) and



December 26, 1984 (HCAR No. 23545), SERI caused to be issued by Claiborne County, Mississippi a total of \$49.5 million of Series A, \$27.1 million of Series B and \$206 million of Series C Adjustable/Fixed Rate Pollution Control Revenue Bonds ("Revenue Bonds").

The Series A and Series B Revenue Bonds are presently secured by letters of credit ("LOCs") issued by Citibank, N.A. in the amounts of \$56,368,125, due to expire on December 11, 1988 (with respect to Series A), and \$30,860,125, due to expire on June 11, 1989 (with respect to Series B). The Series C Revenue Bonds are presently secured by LOCs issued by five banks including Citibank, N.A. in the aggregate amount of \$234,582,500 due to expire on December 11, 1989.

SERI proposes to provide alternative collateral for the Revenue Bonds in a number of ways: (1) SERI might issue and pledge first mortgage bonds ("Bonds") equal in principal amount to that of the Revenue Bonds (including, possibly, accrued interest and premium), (2) obtain a new letter of credit backing with different banks, or (3) obtain credit insurance with respect to certain or all of the banks presently comprising the Series C LOC banks until termination of that arrangement on December 11, 1989. SERI's obligations with respect to the Bonds or the revised letter of credit arrangements might, under certain circumstances, be secured by assignment of certain rights under an Availability Agreement among SERI and Middle South's other electric utility subsidiaries and under a Capital Funds Agreement between SERI and Middle South.

SERI has requested an exception from the competitive bidding requirements pursuant to Rule 50(a)(5) with respect to the issuance and pledge of the Bonds so that it may offer the Bonds through a negotiated public offering or private placement.

#### **New England Electric System, et al. (70-7535)**

New England Electric System ("NEES"), a registered holding company, and ten of its subsidiaries, Granite State Electric ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), NEES Energy Incorporated ("NEES Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass Hydro"), New

England Hydro ("NH Hydro"), New England Power Company ("Power Company") and New England Power Service Company ("Service Company"), 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40, 45 and 50(a)(5) thereunder.

Each of the above named subsidiaries (with the exception of NES Energy, NEEL, Mass Hydro, and NH Hydro) proposes, through October 31, 1990, to borrow from the NEES Money Pool ("Money Pool") and/or banks, and/or, in the cases of Mass Electric and Power Company, to issue commercial paper up to the following maximum outstanding amounts: Granite—\$7 million; Mass Electric—\$90 million; Narragansett—\$50 million; NEET—\$10 million; Power Company—\$300 million and Service Company—\$10 million.

Under the Money Pool, surplus funds that may be available from day to day in the treasuries of NEES and certain of the NEES System subsidiaries are used to make loans to subsidiaries in need of short-term funds. Those companies able to issue commercial paper will pay the weighted monthly average of the rates on its outstanding commercial paper. During any month when no such commercial paper is outstanding, the rate will be the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal. Borrowing members without the ability to issue commercial paper will pay interest at a rate of 1.08 times the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal, but in no event greater than the monthly average of the base lending rate of the First National Bank of Boston.

The proposed borrowings from banks will be evidenced by notes maturing in less than one year from the date of issuance. Based on compensating balance requirements allocated to each bank borrowing of about 10% to 20%, or fees equivalent thereto, the effective interest cost of such borrowing would be approximately 11.1% to 12.5% per annum, based on a base lending rate of 10%.

The commercial paper proposed to be issued and sold by, Mass Electric and Power Company will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days. It is requested that the

issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50(a)(5).

#### **New England Electric System (70-7552)**

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

By prior Commission order, NEES was authorized to issue short-term notes to banks up to an aggregate maximum amount outstanding at any one time of \$100 million. This authority expires on October 31, 1988 (HCAR No. 24358, March 31, 1987).

NEES now proposes to issue and sell up to a maximum aggregate outstanding principal amount of \$100 million of short-term notes to banks from time to time through October 31, 1990. The notes will mature in less than one year from the date of issuance. The effective interest cost of borrowings will not exceed the effective interest cost of borrowings at the greater of the bank's base or prime lending rate, or the rate published by the Wall Street Journal as the high federal funds rate plus 1%, with compensating balance requirements of 10% of the line of credit and 10% of any borrowing thereunder. Based upon a prime rate of 10%, the effective interest cost would not exceed 12.5% per annum.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-20893 Filed 9-13-88; 8:45 am]

BILLING CODE 8010-01-M

#### **SMALL BUSINESS ADMINISTRATION**

##### **National Advisory Council; Meeting**

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC will hold a National Advisory Council meeting, from 4:30 p.m. on Sunday, October 2, 1988 to 2:15 p.m. Tuesday, October 4, 1988, at the Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.



For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street, NW., Room 503-E, Washington, DC 20416—(202) 653-6748.

Jean M. Nowak,  
Director, Office of Advisory Councils,  
September 8, 1988.  
[FR Doc. 88-20883 Filed 9-13-88; 8:45 am]  
BILLING CODE 8025-01-M

#### Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Casper, will hold a public meeting at 9:00 a.m. on Tuesday, October 25, 1988, at the Park Inn, 2518 Foothill Boulevard, Rock Springs, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, Federal Building, Room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82601—(307) 261-5761.

Jean M. Nowak,  
Director, Office of Advisory Council,  
September 7, 1988.  
[FR Doc. 88-20884 Filed 9-13-88; 8:45 am]  
BILLING CODE 8025-01-M

#### DEPARTMENT OF STATE

[Public Notice CM-8/1216]

#### Secretary of State's Advisory Committee on Private International Law; Study Group on International Trade Documentation; Meeting

The Department of State has established a Study Group to review proposals to unify private law in the area of trade documentation and related trade practices. The Study Group will carry out its functions as part of the Secretary of State's Advisory Committee on Private International Law. The first meeting of the Study Group will be at 10:00 a.m. on Friday, September 30, 1988 in New York at the Fordham University School of Law, 140 West 62d Street, New York, NY, Dean's Conference Room.

The initial focus of the Study Group will be the formulation of United States positions for the November meeting of a United States positions for the November meeting of a United Nations

Commission on International Trade Law (UNCITRAL) Working Group on stand-by letters of credit and international bank guarantees. The UNCITRAL Working Group, of which the United States is a member, will review draft rules on bank guarantees proposed by the International Chamber of Commerce and, in addition, will decide whether to undertake further work in the field, including preparation of a model national law.

The agenda of the Study Group meeting will include a review of American practice and the formulation of recommended United States positions with respect to (a) the proposed ICC rules, and whether UNCITRAL should support, propose amendments or take any other action with respect thereto, and (b) whether UNCITRAL should undertake further work in this area, such as a model national law or standard international forms for letters of credit or guarantees. The meeting will cover the impact of the proposed rules on project financing, trade and banking regulation, and other issues such as revocability, party autonomy and jurisdiction, taking into account draft amendments to Uniform Commercial Code Article 5.

Information on the UNCITRAL project and the proposed ICC rules is set forth in a Report of the Secretary-General on Stand-By Letters of Credit and Guarantees, United Nations Doc. A/CN.9/301, March 21, 1988. Copies of the Report, recent amendments to the proposed ICC Rules and additional information may be obtained by writing the Office of the Assistant Legal Adviser for Private International Law, L/PIL, Room 6417, Department of State, Washington, DC 20520, or by calling Harold S. Burman at (202) 653-9852.

Members of the general public may attend the meeting up to the capacity of the meeting room. As access to the meeting room is controlled, the office indicated above should be notified not later than Tuesday, September 27th of the name, affiliation, address and phone number of persons expecting to attend. In order to facilitate planning for the meeting, members of the public are requested to indicate whether they expect to comment on particular issues.

Peter H. Pfund,  
Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88-20897 Filed 9-13-88; 8:45 am]  
BILLING CODE 4710-08-M

#### DEPARTMENT OF TRANSPORTATION

##### Maritime Administration

[Docket No. M-005]

#### Application of Foreign Underwriters To Write Marine Hull Insurance; Baltica Insurance Co.

The Maritime Administration (MARAD) has received applications under 46 CFR Part 249 from Baltica Insurance Company, a Danish underwriter, and Pohjola Insurance Company, Ltd., a Finnish underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and must be received by close of business on September 28, 1988.

Dated: September 9, 1988.  
James E. Saari,  
Secretary, Maritime Administration.  
[FR Doc. 88-20930 Filed 9-13-88; 8:45 am]  
BILLING CODE 4910-81-M

[Docket No. M-006]

#### Application of Foreign Underwriters To Write Marine Hull Insurance; Sirius Insurance Co., Ltd.

The Maritime Administration (MARAD) has received applications under 46 CFR Part 249 from Sirius Insurance Co., Ltd., a Swedish underwriter, and Storebrand International A/S, a Norwegian underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and must be received by close of business on September 28, 1988.



Dated: September 9, 1988.  
**James E. Saari,**  
*Secretary, Maritime Administration.*  
[FR Doc. 88-20930 Filed 9-13-88; 8:45 am]  
BILLING CODE 4910-81-M

#### UNITED STATES INFORMATION AGENCY

##### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "A Sign and a Witness: 2,000 Years of Hebrew Books and Illuminated Manuscripts" (See list <sup>1</sup>

<sup>1</sup> A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the New York Public Library, New York, New York, beginning on or about October 15, 1988, to on or about January 14, 1989, is in the national interest.

The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view of the United States concerning the ownership of the exhibition objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. See letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 *Dept. of State Bulletin* 11 (October 1978; Statement of September 1, 1982 of President Ronald Reagan, reprinted in 82 *Dept. of State Bulletin* 23 (September 1982).

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: September 2, 1988.  
**R. Wallace Stuart,**  
*Acting General Counsel.*  
[FR Doc. 88-20933 Filed 9-13-88; 8:45 am]  
BILLING CODE 8230-01-M

##### Bureau of Educational and Cultural Affairs; University Affiliations Program; Application Notice for Fiscal Year 1989; Correction

The announcement on this subject appearing at 53 FR 30375 on August 11, 1988, inadvertently omitted Burkina Faso from the list of eligible African countries. Prospective applicants are asked to make this change in their copies of said announcement.

Dated: September 6, 1988.  
**Omar G. Encarnacion,**  
*Program Officer.*  
[FR Doc. 88-20934 Filed 9-13-88; 8:45 am]  
BILLING CODE 8230-01-M



# Sunshine Act Meetings

Federal Register

Vol. 53, No. 178

Wednesday, September 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL RESERVE SYSTEM

Committee on Employee Benefits

**TIME AND DATE:** 4:00 p.m., Tuesday, September 20, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

## MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and

other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (1) Early retirement program for a Federal Reserve Bank; and (2) Amendment to the System's pension plan.

2. Any items carried forward from a previously announced meeting.

## CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: September 12, 1988.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 88-21051 Filed 9-12-88; 2:57 pm]

BILLING CODE 6210-01-M







# Federal Register

---

Wednesday  
September 14, 1988

---

## Part II

### Department of Health and Human Services

---

#### Food and Drug Administration

---

#### 21 CFR Part 886

#### Ophthalmic Devices; Exemptions From Premarket Notification; Final Rule



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 886

[Docket No. 86N-0013]

## Ophthalmic Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 55 generic types of class I ophthalmic devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

EFFECTIVE DATE: October 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

**SUPPLEMENTARY INFORMATION:** The Medical Device Amendments of 1976 (the amendments) Pub. L. 94-295 establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance and safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did

not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels specifically included them in recommendations made to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more complex notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address pressing regulatory concerns and will make the agency more efficient. The development of exemption criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On September 2, 1987 (52 FR 33346), FDA published a final regulation classifying 109 ophthalmic devices. Also on September 2, 1987 (52 FR 33366), FDA proposed to exempt from the requirement of premarket notification, with limitations, 55 of those class I ophthalmic devices. Interested persons were given until November 2, 1987, to comment. No comments were received. Therefore, FDA is adopting the regulation as proposed.

**Criteria for 510(k) Exemptions**

FDA is exempting a generic type of class I device from the requirement of premarket notification, with the limitations described below, if the agency determines that premarket notification is unnecessary for the protection of the public health. FDA is granting an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determination above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendment device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(2) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical



instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

#### Reference

The following information has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

#### Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

#### List of Subjects in 21 CFR Part 886

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 886 is amended as follows:

#### PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR Part 886 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-548, 552-559, 565-574,

576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 886.9 is added to Subpart A to read as follows:

#### § 886.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 886.1040 is amended by revising paragraph (b) to read as follows:

#### § 886.1040 Ocular esthesiometer.

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. Section 886.1140 is amended by revising paragraph (b) to read as follows:

#### § 886.1140 Ophthalmic chair.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. Section 886.1150 is amended by revising paragraph (b) to read as follows:

#### § 886.1150 Visual acuity chart.

(b) *Classification.* The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. Section 886.1170 is amended by revising paragraph (b) to read as follows:

#### § 886.1170 Color vision tester.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

7. Section 886.1190 is amended by revising paragraph (b) to read as follows:

#### § 886.1190 Distometer.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.



8. Section 886.1200 is amended by revising paragraph (b) to read as follows:

**§ 886.1200 Optokinetic drum.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

9. Section 886.1270 is amended by revising paragraph (b) to read as follows:

**§ 886.1270 Exophthalmometer.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

10. Section 886.1320 is amended by revising paragraph (b) to read as follows:

**§ 886.1320 Fornixscope.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. Section 886.1330 is amended by revising paragraph (b) to read as follows:

**§ 886.1330 Amsler grid.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

12. Section 886.1350 is amended by revising paragraph (b) to read as follows:

**§ 886.1350 Keratoscope.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807,

Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

13. Section 886.1375 is amended by revising paragraph (b) to read as follows:

**§ 886.1375 Bagolini lens.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

14. Section 886.1380 is amended by revising paragraph (b) to read as follows:

**§ 886.1380 Diagnostic condensing lens.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. Section 886.1390 is amended by revising paragraph (b) to read as follows:

**§ 886.1390 Flexible diagnostic Fresnel lens.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

16. Section 886.1395 is amended by revising paragraph (b) to read as follows:

**§ 886.1395 Diagnostic Hruby fundus lens.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is

exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

17. Section 886.1400 is amended by revising paragraph (b) to read as follows:

**§ 886.1400 Maddox lens.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. Section 886.1410 is amended by revising paragraph (b) to read as follows:

**§ 886.1410 Ophthalmic trial lens clip.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

19. Section 886.1415 is amended by revising paragraph (b) to read as follows:

**§ 886.1415 Ophthalmic trial lens frame.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

20. Section 886.1420 is amended by revising paragraph (b) to read as follows:

**§ 886.1420 Ophthalmic lens gauge.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.



21. Section 886.1460 is amended by revising paragraph (b) to read as follows:

**§ 886.1460 Stereopsis measuring instrument.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

22. Section 886.1500 is amended by revising paragraph (b) to read as follows:

**§ 886.1500 Headband mirror.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

23. Section 886.1605 is amended by revising paragraph (b) to read as follows:

**§ 886.1605 Perimeter.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

24. Section 886.1650 is amended by revising paragraph (b) to read as follows:

**§ 886.1650 Ophthalmic bar prism.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

25. Section 886.1655 is amended by revising paragraph (b) to read as follows:

**§ 886.1655 Ophthalmic Fresnel prism.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

26. Section 886.1660 is amended by revising paragraph (b) to read as follows:

**§ 886.1660 Gonioscopic prism.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

27. Section 886.1665 is amended by revising paragraph (b) to read as follows:

**§ 886.1665 Ophthalmic rotary prism.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

28. Section 886.1700 is amended by revising paragraph (b) to read as follows:

**§ 886.1700 Pupillometer.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

29. Section 886.1770 is amended by revising paragraph (b) to read as follows:

**§ 886.1770 Manual refractor.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

30. Section 886.1790 is amended by revising paragraph (b) to read as follows:

**§ 886.1790 Nearpoint ruler.**

(b) *Classification.* Class I. The device also is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

31. Section 886.1800 is amended by revising paragraph (b) to read as follows:

**§ 886.1800 Schirmer strip.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

32. Section 886.1810 is amended by revising paragraph (b) to read as follows:

**§ 886.1810 Tangent screen (campimeter).**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. Section 886.1840 is amended by revising paragraph (b) to read as follows:

**§ 886.1840 Simulation (including crossed cylinder).**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good



manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

34. Section 886.1860 is amended by revising paragraph (b) to read as follows:

**§ 886.1860 Ophthalmic instrument stand.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

35. Section 886.1870 is amended by revising paragraph (b) to read as follows:

**§ 886.1870 Stereoscope.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

36. Section 886.1880 is amended by revising paragraph (b) to read as follows:

**§ 886.1880 Fusion and stereoscopic target.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

37. Section 886.1905 is amended by revising paragraph (b) to read as follows:

**§ 886.1905 Nystagmus tape.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in

Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

38. Section 886.1910 is amended by revising paragraph (b) to read as follows:

**§ 886.1910 Spectacle dissociation test system.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

39. Section 886.4230 is amended by revising paragraph (b) to read as follows:

**§ 886.4230 Ophthalmic knife test drum.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

40. Section 886.4335 is amended by revising paragraph (b) to read as follows:

**§ 886.4335 Operating headlamp.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

41. Section 886.4350 is amended by revising paragraph (b) to read as follows:

**§ 886.4350 Manual ophthalmic surgical instrument.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

42. Section 886.4360 is amended by revising paragraph (b) to read as follows:

**§ 886.4360 Ocular surgery irrigation device.**

(b) *Classification.* Class I. If the device does not directly contact the patient's body, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

43. Section 886.4445 is amended by revising paragraph (b) to read as follows:

**§ 886.4445 Permanent magnet.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

44. Section 886.4570 is amended by revising paragraph (b) to read as follows:

**§ 886.4570 Ophthalmic surgical marker.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

45. Section 886.4770 is amended by revising paragraph (b) to read as follows:

**§ 886.4770 Ophthalmic operating spectacles (loupes).**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

46. Section 886.4855 is amended by revising paragraph (b) to read as follows:

**§ 886.4855 Ophthalmic instrument table.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807,



Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. Section 886.5120 is amended by revising paragraph (b) to read as follows:

**§ 886.5120 Low-power binocular loupe.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. Section 886.5420 is amended by revising paragraph (b) to read as follows:

**§ 886.5420 Contact lens inserter/remover.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

49. Section 886.5540 is amended by revising paragraph (b) to read as follows:

**§ 886.5540 Low-vision magnifier.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. Section 886.5600 is amended by revising paragraph (b) to read as follows:

**§ 886.5600 Ptois crutch.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good

manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 886.5800 is amended by revising paragraph (b) to read as follows:

**§ 886.5800 Ophthalmic bar reader.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. Section 886.5810 is amended by revising paragraph (b) to read as follows:

**§ 886.5810 Ophthalmic prism reader.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

53. Section 886.5840 is amended by revising paragraph (b) to read as follows:

**§ 886.5840 Magnifying spectacles.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements.

54. Section 886.5844 is amended by revising paragraph (b) to read as follows:

**§ 886.5844 Prescription spectacle lens.**

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter.

55. Section 886.5870 is amended by revising paragraph (b) to read as follows:

**§ 886.5870 Low-vision telescope.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

56. Section 886.5910 is amended by revising paragraph (b) to read as follows:

**§ 886.5910 Image intensification vision aid.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

57. Section 886.5915 is amended by revising paragraph (b) to read as follows:

**§ 886.5915 Optical vision aid.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Part 807, Subpart E of this chapter. The device also is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: August 22, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-20692 Filed 9-13-88; 8:45 am]

BILLING CODE 4160-01-M







# Asbestos Federal Register

---

Wednesday  
September 14, 1988

---

## Part III

## Department of Labor

Occupation Safety and Health  
Administration

---

29 CFR Parts 1910 and 1926  
Occupational Exposure to Asbestos,  
Tremolite, Anthophyllite, and Actinolite;  
Final Rules; Amendment



## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1910 and 1926

[Docket No. H-033]

## Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Final rules; amendment.

**SUMMARY:** On June 20, 1986 OSHA published revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite in general industry and construction. In these standards, OSHA reduced the 8-hour time weighted average (TWA) permissible exposure limit (PEL) to 0.2 f/cc, but did not issue a short term exposure limit (STEL) or excursion limit for exposure to these materials. OSHA is now amending these rules by adding an excursion limit of 1 f/cc average over a sampling period of 30 minutes.

The Agency has based this determination on its review of the asbestos rulemaking record using criteria set forth by the Court of Appeals for the District of Columbia Circuit (*Public Citizen Health Research Group v. Tyson*, 796 F. 2d 1479 (D.C. Cir., 1986)) and *Building and Construction Trades Department, AFL-CIO v. Brock*, 838 F. 2d 1258, 1273 (D.C. Cir., 1988)). Based on this review, OSHA has determined that the record supports the issuance of a 1 f/cc excursion limit measured over 30 minutes for all workplaces affected by the revised asbestos standards and is amending the standards to that effect. In addition employers are required to take other protective actions when employee exposures exceed the EL. The evidence and considerations supporting this determination are set out in the supplementary information section of this document.

**EFFECTIVE DATE:** This final standard will become effective October 14, 1988 except the information collection requirements of 29 CFR 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (f)(3)(i), (j)(5), (l), and (m), and 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m) and (n) as they apply to the excursion limit which will be submitted to OMB for approval. OSHA will publish a document in the future establishing an effective date for the information collection requirements.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, OSHA, U.S. Department of Labor, Office of Public

Affairs, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

**SUPPLEMENTARY INFORMATION:****I. Clearance of Information Collection Requirements**

On March 31, 1983, the Office of Management and Budget (OMB) published 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (48 FR 13666). Part 1320, which became effective on April 30, 1983 and was revised May 10, 1988 (*Federal Register*, Vol. 53, No. 90), sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements. The sections of this final standard which may create recordkeeping requirements are the following: 29 CFR 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (f)(3)(i), (j)(5), (l), and (m), and 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m) and (n).

In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it will be submitting the information collection requirements for the standards under control numbers 1218-0133 and 1218-0134 to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information for General Industry is estimated to average 0.73 hours per response and 0.03 hours per response for the Construction Industry, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**II. Regulatory and Legal Authority Background**

On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction (51 FR 22612 et seq., Pub. June 20, 1986). Effective July 21, 1986, the revised standards amended OSHA's previous asbestos standard issued in 1972. The 1972 standard included a 10 f/cc

"ceiling" limit as well as a 2 f/cc time weighted average (TWA) permissible exposure limit.

Chief among the revised standards provisions was a tenfold reduction in the TWA PEL to 0.2 f/cc from 2 f/cc. However, although the April 1984 notice of proposed rulemaking stated that OSHA would consider a revised ceiling limit, in the final revised standards OSHA determined not to issue an explicit short term limit (51 FR 22682-3, 22709).

OSHA based this determination on its finding that the rulemaking record consisting of "toxicological and dose-response data failed to show that short-term exposure to asbestos is associated with an independent or greater adverse health effect than is exposure to a corresponding dose spread over an 8-hour day; that is, there is no evidence that exposure to asbestos results in a "dose-rate" effect \* \* \* OSHA further stated that its decision was "consistent with OSHA's recent policy decision described in the Supplemental Statement of Reasons for the Final Rule for Ethylene Oxide (50 FR 64) in which OSHA established that short term exposure limits for toxic substances are not warranted in the absence of health evidence demonstrating a dose-rate effect (51 FR at 22709)." OSHA's decision to not issue a STEL was challenged in petitions filed in the Court of Appeals for the District of Columbia.

Subsequently, on July 25, 1986, the United States Court of Appeals for the District of Columbia reviewed the ethylene oxide (EtO) standard which OSHA had relied on in its decision to not issue an asbestos EL. It held that OSHA contravened the OSH Act when it failed to issue a short term limit for ethylene oxide based on the Agency's finding that the EtO record did not support a "dose-rate effect." The Court held that the OSH Act compels the Agency to adopt a short term limit if the rulemaking record shows that it would further reduce a significant health risk and is feasible to implement regardless of whether the record supports a "dose-rate" effect (796 F. 2d at 1505). This decision states that "(B)arring alternative avenues to the same result, OSHA shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employees will suffer material impairment of health. 29 U.S.C. 655 (b)(5) (1982). "(S)ince OSHA has found that a significant health hazard remains even with the (TWA) PEL, the agency must find either that a STEL will have no effect on that risk, or that a STEL is not



feasible, if the Agency declines to impose a short term limit" (796 F. 2d at 1505).

Because OSHA had relied on the EtO rationale in making its asbestos decision, OSHA decided to reconsider its decision not to issue an excursion limit for asbestos and informed the Court of its intention to reconsider the STEL issue based on the existing record.

The Court issued its decision reviewing the asbestos standards in February 1988 (*B.C.T.D., AFL-CIO v. Brock* 838 F. 2d 1258). Therein, the Court noted OSHA's commitment to complete reconsideration of the STEL issue and ordered "that reconsideration be completed within 60 days of the issuance of the mandate in this case, which issued on July 6, 1988.

The Court also reiterated the criteria requiring an agency to adopt a STEL: viz, that the measure will result in a further reduction in significant health risk and that it is feasible to implement.

OSHA has reviewed the asbestos rulemaking record in order to apply these criteria. The agency finds that compliance with a short term excursion limit would further reduce a significant health risk remaining after the TWA limit of 0.2 f/cc was imposed. Secondly, the Agency finds that the lowest excursion level which is feasible both to measure and to institute primarily through engineering and work practice controls is 1 fiber per cc measured over 30 minutes. OSHA therefore is imposing this level as an excursion limit to be met by all employers covered by the revised standards. The Agency also is withdrawing its previous determination to not issue an excursion limit or STEL.

OSHA notes that it is adopting the term "excursion limit" to refer to the short term permissible exposure limit established here, so that the terminology used by the American Conference of Governmental Industrial Hygienists (ACGIH) and by OSHA will not conflict. The term "excursion limit" is used by the ACGIH to refer to a limitation on short term exposures which are called for by industrial hygiene considerations, where toxicological data are unavailable. The term "STEL" is used by the American Conference of Governmental Industrial Hygienists (ACGIH) to refer to a short term limit dictated by specific toxicologic or hazard data (ACGIH Threshold Limit Values and Biological Exposure Indices for 1986-1987, 3-5). Because OSHA is not basing the short term permissible limit for asbestos on toxicological data, OSHA instead is using the term

"excursion limit" to designate that limit. The term "ceiling limit" historically was used by OSHA to refer to both a

"peak" limit, *ie*, with no duration specified, and to a limit measured over a given time period, such as 30 minutes. Because of this dual usage, the term was imprecise and OSHA believes it should be replaced with "excursion limit."

This preamble, in some places, uses "STEL" and "excursion limit" interchangeably, mostly in quoting from previous discussions to conform to previous usage. The following discussion further explains the reasons for OSHA's decision to adopt an excursion limit of 1 f/cc measured over 30 minutes.

#### *A. The Excursion Limit Chosen Will Further Reduce a Significant Health Risk*

OSHA finds that compliance with a reduced excursion limit would further reduce a significant health risk from asbestos exposure which exists after imposing a 0.2 f/cc time-weighted PEL.

OSHA's risk assessment showed that lowering the TWA PEL from 2 f/cc to 0.2 f/cc reduces the asbestos related cancer mortality risk from lifetime exposure from 64 deaths per 1,000 worker to 6.7 deaths per 1,000 workers. OSHA estimated that the incidence of asbestosis would be 5 cases per 1,000 workers exposed for a working lifetime under the TWA PEL of 0.2 f/cc. Counterpart risk figures for 20 years of exposure are excess cancer risks of 4.5 per 1,000 workers and an estimated asbestosis incidence of 2 cases per 1,000 workers.

OSHA's risk assessment also showed the persistence of a significant risk at the 0.1 f/cc action level. The excess cancer risk remaining at that level is a lifetime risk of 3.4 per 1,000 workers and a 20 year exposure risk of 2.3 per 1,000 workers. OSHA concludes therefore that continued exposure to asbestos at the TWA permitted level and action level presents residual risks to employees which are still significant.

Imposing the excursion limit will reduce risk to employees whose asbestos exposure is limited to one or two short term bursts, lasting 30 minutes each. If the periods of exposure are less than 30 minutes then employees with more "bursts" will also have their risk reduced by the excursion limit. The maximum reduction will be felt by employees with non-detectable background asbestos exposures, whose only detectable exposure is a single burst (or bursts) lasting no longer than 30 minutes and which measure no more than 3.2 f/cc (the short term equivalent of the 0.2 f/cc TWA PEL).

To calculate the degree of risk reduction for such employees we note that the 8-hour time-weighted average

exposure equivalent of the excursion limit established here is 0.063 f/cc. That is, if a worker is exposed to asbestos at the excursion limit of 1 f/cc for 30 minutes and exposed to no other asbestos for the remainder of the day, the 8 hour TWA exposure would be 0.063 f/cc. This figure is calculated by dividing the excursion limit of 1 f/cc by the number of 30 minute periods in an eight hour work day (16).

The risk assessment methods previously employed in the final asbestos standards (the linear cumulative dose model) can be used to calculate cancer risks for workers exposed only to one burst of asbestos for 30 minutes at the 1 f/cc excursion limit (equivalent to 0.063 f/cc as an 8-hour TWA). Using linear proportionality to previously calculated risks, these predictions are a lifetime (45 year) excess risk of 2.3 per 1,000 workers, and an excess cancer risk for 20 years exposure of 1.5 per 1,000 workers. OSHA believes that these risks are clearly not insignificant. In this case where workers are exposed only to one burst of asbestos per day, asbestos exposure and thus also cancer risk are substantially reduced by 67%. Where additional exposures occur beyond the 30-minute exposure, the reduction in risk is lower than calculated, and conversely, the cancer risk is greater than calculated.

The impact of this reduction will be felt by approximately 35,800 employees estimated by OSHA as having 8-hour TWA exposures below the current 0.2 f/cc PEL but short term exposures which exceed the excursion limit. (See Table 2, *infra*).

Thus, in accordance with the *Public Citizen* decision, the imposition of an excursion limit will further reduce significant risk remaining under the current standard. OSHA estimates, based on the total estimated affected population, and the risk factors cited, that about 118 lives will be saved based on lifetime exposures and 79 lives based on 20 year exposure because of the imposition of this excursion limit.

OSHA also finds that unregulated short-term exposures to asbestos unnecessarily elevate cumulative exposures even if the time weighted average is below the PEL. Because OSHA has found that significant risks of asbestos-related disease exist at cumulative exposures below the 1986 PEL of 0.2 f/cc, compliance with an excursion limit would further reduce such risks as well (See 51 FR at 26647-8), although these reductions have not been quantified.



The ways the institution of an excursion limit of 1 f/cc over 30 minutes will reduce risks to employees are illustrated by the following examples from the rulemaking record.

In some important operations exposure patterns consist of frequent short term rather than continuous levels of exposure. In the construction industry, asbestos removal and repair of asbestos-containing products are often short-term and generate peak exposures (Ex. 84-474, 84-462). Installation of new construction materials also involves intermittent peak exposures, for example, drilling and sawing pipe and sheet.

When asbestos-cement pipe is installed, cutting and machining of pipe can result in potentially high exposures. A representative of the Association of A/C Pipe Producers (AACPP) recommended work practices involving shrouded tools, which if followed were said to limit peak exposures for 15 minutes to 0.75 f/cc and 8-hour TWA exposures to under 0.1 f/cc (Ex. 91-16).

OSHA believes that the use of shrouded tools on-site will increase because of the adoption of an excursion limit. Where only a small amount of cutting on the construction site is needed, it is possible that a 0.2 f/cc TWA can be attained with unshrouded tools. With a short term excursion limit, the employer is more likely to require and the employee is more likely to use the shrouded tools to ensure compliance. In so doing, the employee's cumulative exposure will be significantly reduced and the risk of developing asbestos related disease will be correspondingly reduced.

In general industry, the largest group of exposed workers, brake repair workers, are subject to peak exposures. Their work can be intermittent and the evidence shows that for workers performing occasional brake repair jobs, their exposures occur in short spurts which can be above 1.0 f/cc, but when averaged over an 8 hour day fall within the permissible TWA limit.

OSHA believes the imposition of an excursion limit will increase the probability that employers will utilize the more effective but not required, work practices to assure compliance with the new excursion limit. OSHA had prohibited one method of cleaning brake linings using compressed air because the evidence showed that using that method likely would exceed the new TWA PEL in almost all cases. Other practices, although discouraged, are not prohibited. The evidence indicated that brushing the asbestos residue from affected parts sometimes exceeded a 1 f/cc excursion limit, although the new

time-weighted PEL of 0.2 f/cc might still be met (Exh. 84-263, 90-148). Additional information about practices which will result in lower short-term as well as TWA exposures levels is set out in Appendix F to § 1910.1001.

Consequently, safer working conditions will result for the large number of employees performing automotive brake repair operations.

Other general industry employees will benefit from an excursion limit. In secondary manufacturing, especially gasket manufacturing, asbestos operations often are conducted on an intermittent basis (Exh. 235 A). The time-weighted average would mostly be met even with the use of inferior control equipment. Issuance of an excursion limit would require the use of the best available control equipment and would thus reduce the risk of asbestos related disease for secondary manufacturing workers whose TWA exposures were at or below the PEL.

In addition, control of short term exposures will help employers identify and control the sources that result in variable exposures. OSHA notes that an employee's exposure to toxic substances in the workplace varies from day-to-day and varies within the day's work shift. The meaning of day-to-day variability was considered in the promulgation of the 0.2 f/cc, 8-hour TWA PEL (see 51 FR 22652 to 22654).

OSHA recognizes that various factors cause day-to-day variability, including sampling error in the measurement of the airborne asbestos concentrations, changes in work practices, and changes in ventilation due to misapplication or malfunction. OSHA has concluded that the major sources of day-to-day variability can be moderated by diligent employer control (51 FR 22653). In addition, OSHA has specified a sampling and analytical method which would standardize measurement procedures and greatly reduce sampling error. OSHA determined that the 0.2 f/cc PEL is technologically feasible and will not result in an unfair citation to the conscientious employer. The reviewing Court upheld OSHA's findings in these respects.

Based on its analysis, OSHA believes, for industries that manufacture asbestos products, where asbestos is used as part of a continuing process, that the causes of excursions within a day are similar to the causes of day-to-day variability. Changes in work practice and malfunctioning equipment could cause exposure excursions. Break-downs were identified as a major reason for excursions in manufacturing (AIA/NA, P.H. brief III-44). Within-day-variability may also occur in industries where work

with asbestos occurs intermittently during the day; the work cycle will result in temporary and high dust concentrations. Poor maintenance and deterioration of ventilation equipment, such as fan belt slippage, clogged filters and system damage can also influence within day variability as the ventilation system copes increasingly less successfully with the high end of the day's distribution of airborne fibers.

OSHA believes that industries that use asbestos on a continuous basis in well controlled processes such as the manufacture of asbestos products, should keep air concentrations from fluctuating greatly; that the 0.2 f/cc TWA PEL will force the use of the best technology and will require that diligent work practices, maintenance procedure and housekeeping be applied. Thus the 1.0 f/cc excursion limit should have minimal impact on these industry sectors and will not require the installation of new equipment and controls. However, OSHA believes that here too, the 1.0 f/cc excursion limit will provide a quantitative measure of the diligence of the applied work practices, maintenance procedures and housekeeping, and thus will have an overall beneficial effect to limit both interday and within-day-variability.

For the foregoing reasons, OSHA believes that imposing an excursion limit will further reduce the significant risk of asbestos related disease remaining after compliance with the TWA PEL of 0.2 f/cc.

#### *B. Feasibility and Costs of Meeting the New Excursion Limit*

The second prong of the legal test requiring OSHA to adopt an excursion limit, is that such a limit is feasible to implement, (*Public Citizen*, 796 F.2d at 1505). Because section 6(b)(5) of the Act provides that OSHA may promulgate standards to the extent that they are both economically and technologically feasible, the following discussion explores both aspects of feasibility. This discussion is organized into a summary discussion of technological and economic feasibility for all sectors; a sector by sector operational discussion of technological feasibility, and a discussion of the capability of the OSHA reference method (ORM) to measure the excursion limit.

OSHA finds that the new excursion limit of 1 f/cc measured over ½ hour is technologically feasible for most significant operations in most affected industries using the same engineering and work practice controls that were determined necessary to meet the PEL. OSHA believes also that the additional



cost of the engineering and work practice controls will be minimal. Thus, compliance with the new excursion limit is technologically feasible at minimal additional costs, which are well below the threshold of economic infeasibility. For some operations, OSHA has determined that compliance with the new limit will require respirators. Since these operations in large part are the same which OSHA previously determined will require respiratory protection to meet the time weighted average PEL of 0.2 f/cc in the revised standards, OSHA believes that the cost of the additional respirators will also be minimal. OSHA also believes that the costs of the ancillary provisions triggered by the excursion limit are similarly minimal and feasible for affected industries.

The evidence supporting these determinations consists of data and comments previously discussed and analyzed by OSHA in its Final Economic Impact and Regulatory Flexibility Analysis set out in 51 FR 22650 *et seq.*, and of data in the rulemaking record illustrating historic industry capability to meet the excursion limit. OSHA projects that this capability will improve because the new limit requires optimum use of existing technology.

#### 1. General Industry

As stated above, OSHA finds that the excursion limit is feasible to achieve in most sectors using the same engineering and work practice controls necessary to achieve the time weighted average limit. In some cases, increased attention to maintenance of controls, diligence in their application, and housekeeping will achieve compliance with the excursion limit, when a more relaxed application of the same controls would meet the TWA PEL. The data submitted to the record specifically showing short term exposures indicate that troublesome areas in meeting the new excursion limit in general industry are essentially the same areas as OSHA determined would have difficulty in meeting the TWA limits. Thus data from 1979 showing 60 minute exposures in asbestos cement sheet plants indicated that as with TWA exposures the operations likely to experience compliance difficulty were finishing or sanding operations (Exh. 235A, Table VI) which are unique to A/C sheet. Although these data also imply difficulty for the mixing stage of the sheet process, OSHA notes that it has determined the wet and dry mixing stages for A/C sheet are "virtually the same as the mixing stages of A/C pipe", which was judged capable for reducing

exposures to required levels (51 FR 22656).

The relatively poor reported levels in mixing reflect the fact that the A/C sheet industry has lagged behind the pipe industry in using the best available control technology. (See 51 FR 22657.) Pipe-coupling cutoff operations were also judged to have difficulty in meeting the permissible limits (51 FR 22657).

For both the sheet and pipe manufacturing operations, therefore, OSHA believes that only in sheet finishing and pipe coupling should there be problems in feasibility of compliance without respirator use. Because respirator use is likely to be needed to comply with the TWA as well as excursion limit in finishing, OSHA finds the new excursion limit feasible for these industries.

For friction products, since no data was introduced specially relating to short term limits, OSHA analysis essentially turns on its knowledge of the operations constituting the manufacturing of these products. As explained in the preamble to the revised standards, the asbestos friction products include drum brake linings, disc brake linings, disc brake pads, and clutch facings as well as other materials for motion control in industrial applications. As in the A/C sheet industry, troublesome operations needing respirators for compliance may occur in finishing operations, similar to the projections for compliance with the time-weighted average limit (51 FR 22657).

Other primary manufacturing industries, such as gasket and packings, asbestos paper coatings and sealants and asbestos reinforced plastics are expected to have similar capabilities to respond to the new excursion limit. OSHA believes the feasibility analysis for the TWA permissible limits indicates the feasibility of the 1 fiber excursion limit. OSHA notes that its detailed feasibility analysis based on measurements in such sectors for the time weighted average PEL identified sectors where OSHA believed that even in dry mechanical processing, the newly reduced TWA PEL could be met. Thus the agency concluded that the gasket and packings industry could meet the 0.2 f/cc TWA PEL in dry mechanical operations based on data showing levels below 0.2 f/cc; the asbestos paper industry also, on the basis of measurement showing a mean TWA exposure in dry mechanical operations of 0.14 f/cc, was found to be able to meet the TWA PEL of 0.2 f/cc (51 FR 22657-59).

With respect to secondary manufacturing, the Agency noted in the feasibility analysis for the revised standards that in general, receiving and handling primary asbestos products do not pose exposure problems. Compared with the primary processing steps of fiber introduction, mixing, and covering loose fibers, secondary fabrication takes place in a more controllable environment. OSHA had determined that it is feasible for these industries to comply with the 0.2 f/cc TWA PEL in all operations with the exception of some maintenance activities (e.g. repairing or servicing the controls that protect the other workers and a limited number of dry mechanical operations, 51 FR 22660). OSHA believes this judgment applies equally to the new 1 fiber excursion limit.

With respect to ship repair, OSHA has already determined that respirators will be required to comply with the PEL in many jobs because of the problems associated with ship safety rules, confined spaces and nuclear power plants. This imposition of an excursion limit should not result in additional compliance problems for this sector.

#### 12. New Construction

OSHA believes that the new excursion limit of 1 f/cc measured over one-half an hour is feasible for most operations without relying on respirators. OSHA bases this determination on measurement data in the rulemaking record and the feasibility analysis set out in the June, 1986 preamble to the final revised standards.

First, the data on short term exposures in the record, even measurements taken 10 years ago, show that in most new construction activities, the 1 fiber excursion limit is easily complied with. For example in a 1977 study of operations involving A/C pipe installation, virtually all hour long measurements were well below the new limit. After adjustment to the new 1 fiber limit measured over ½ hour, the only operations which would not be in compliance are cutting of pipe with an abrasive disc saw, and cutting and machining pipe with a doty tool without a shroud and wet methods (Consad final report, table 3.2, (p. 39).

Joe Jackson of the Association of A/C Pipe Producers (AACPP) stated that workers following AACPP's recommended work practices could almost always ensure that they would avoid peak exposures in excess of 0.75 f/cc over 15 minutes, while eight-hour time weighted average exposures would remain at 0.1 f/cc or below (Exhibit 91-16, Section p. 12). OSHA stated that "the



current trend is for more of these activities to be performed by the manufacturer rather than in the field" (51 FR at 22662, citing to Exhibit 333, Sections G, O, Q), and that the potential for these exposures has decreased substantially since the 1977 study upon which he based his conclusions. For those operations which will be continued to be performed in the field the study referenced above and Jackson's testimony support OSHA's conclusion that the use of shrouded and doty tools will result in exposure below the new excursion limit.

For A/C sheet installation, measurement results of more recent studies also indicate that with the use of shrouded tools most operations can comply with the new excursion limit. Thus personal exposure monitoring results from use of a shrouded circular saw and drill on flat A/C sheet resulted in 40 minute exposure levels of 0.1 f/cc, well below the 1.0 fiber excursion limit measured over 30 minutes (cite) and use of a shrouded circulator saw, sabre and drill in a 1979 study for period of under one half hour resulted in measurements no higher than 0.15 f/cc. (Consad Tables 3.3 and 3.4).

Installation of asbestos floor products is an operation which generally results in very low exposures (see e.g. Ex. 84-474). Although certain activities involved in removing old flooring may produce exposures which would exceed the TWA and excursion limits, there appears to be virtually no possibility that the excursion limit would be exceeded if the recommendations of the Resilient Floor Covering Institute were followed. (See, for example Table 3.5 in Consad's report, which indicates that TWA exposures of 2.0 f/cc were measured when dry removal or dry sweeping was performed. However, the Institute would prohibit powersanding and blowing asbestos dust and would require wet sweeping and handling.)

Other operations involving the installation of construction products similarly are expected to have few problems complying with the new excursion limit. The installation of new roofing felts and removal of old asbestos-containing felts, have reported measurements which range from significantly below, to above the TWA permissible limit of 0.2 f/cc. Because the geometric mean concentration, however, is below 0.1 for all activities involved in roofing installation and removal, OSHA believes that the excursion limit will be achievable in most cases. Where based upon circumstances such as the age and condition of the materials removed, the wind, and location of the job, if appears

that exposures may exceed this mean, and respiratory protection may be called for to meet both the new excursion limit as well as the PEL.

Installation of asbestos sheet gaskets, on the other hand, should easily meet the new limit without reliance on respirators. Measurement data reporting mostly one-half hour measurements; (the sample ranged from 15 to 95 minutes measurements, with most activities measured up to 37 minutes (Consad, Table 3-8), shows exposures not exceeding 0.39 f/cc measured over 28 minutes. Based on this data, OSHA finds that the new excursion limit is feasible for this sector.

### 3. Construction, Abatement and Demolition

In the feasibility analysis performed relative to the TWA permissible limit of 0.2 f/cc, OSHA determined that engineering controls cannot routinely reduce exposure below the 0.2 f/cc PEL during major asbestos removal projects and that the supplemental use of respirators may be required. (51 FR 22663). Smaller abatement projects, on the other hand, were judged capable of meeting the TWA limit, because the levels measured over a day's work ranged from less than 0.1 f/cc to 0.57 f/cc with a geometric mean value of 0.09 f/cc (51 FR 22664 citing to 84-74, Table 3.10). Compliance expectations for the new excursion limit are that for major removal projects, respirator usage is expected and employees will be protected against both permissible levels by such equipment. For small projects, such as removal of insulation covering pipes in small areas, glove boxes may be available and can, at least some of the time, result in exposures low enough to meet both the TWA and excursion permissible limits (see 51 FR 22664).

Renovation activities involve asbestos exposure when asbestos materials used for pipe and boiler insulation, fireproofing, drywall tape and spackling, and acoustical plasters are disturbed during renovation projects. OSHA concluded in the feasibility analysis in the revised asbestos standards that "engineering controls are generally effective in limiting exposures after asbestos-containing materials have been disturbed, but that workers who actively disturb these materials will probably require respiratory protection to comply with the 0.2 f/cc PEL." 51 FR 22664.

OSHA's contractor noted that "as in asbestos abatement, exposures in renovation vary tremendously depending on the condition and friability of the asbestos materials, and the nature of the work being performed."

(Clayton report, Exh. 3 at 32). Data submitted on the work exposures of renovation workers reflect TWA measurements, not short term levels. However, based on the time weighted average levels reported, OSHA concludes that most renovation workers who are indirectly exposed to asbestos will be protected against the limit by engineering and work practice controls but workers who directly disturb asbestos will need respiratory protection to comply with the new excursion limit, as OSHA similarly concluded with the respect to the TWA PEL.

Maintenance workers will not need respiratory protection for compliance with the new excursion limit in most situations. OSHA bases this determination on limited record data which shows concentrations during routine maintenance activities in a building in which serious deterioration of the asbestos materials had occurred and which appear to be short-term peak measurements. (Clayton report, Exh. 3 at 33).

These measurements ranged from 0.02 to 1.4 f/cc. Because these measurements appear to be a worst case situation, OSHA believes that engineering and work practice controls will adequately control exposures during routine maintenance activities within the new excursion limit of 1 f/cc measured over one-half hour.

### III. Regulatory Analysis

Executive Order 12291 (46 FR 13197, Feb. 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences. OSHA has analyzed the economic consequences of the asbestos standards as promulgated in 1986 at that time. The further analysis required for these revisions follows.

#### A. Population-At-Risk and Benefits

As part of this analysis, OSHA estimates that, under the current asbestos rule, at least 36,000 workers in general industry and construction remain unprotected from asbestos fiber levels above the 1 f/cc excursion limit. For general industry, about one-tenth of the workers within plant operations with 8-hour TWA exposures of between 0.1 and 0.2 f/cc may exceed the excursion limit for thirty minutes a day. This fraction was applied to the sectoral exposure data reported in the Asbestos Regulatory Impact Analysis (RIA) [App. G] to yield OSHA's estimate of 2,703 workers affected by the excursion limit in general industry.



In automotive repair, approximately five percent of the population at risk to asbestos fibers are estimated to exceed the excursion limit. Hence, of the 527,000 workers exposed to asbestos in this sector, approximately 26,000 face thirty-minute exposures above 1 f/cc. In its RIA, OSHA estimated the costs and benefits of using solvent spray on brake-repair work in all affected establishments under the assumption that all firms would find it cost-effective to keep exposures below the action level by using the solvents on all repair jobs. OSHA now believes that some establishments are able to comply with the current standard without excursion-level controls and that the costs and benefits estimated for this industry sector in the RIA were too high.

To comply with the proposed excursion limit provisions, these brake-repair establishments would now be required to use the solvent spray, thereby ensuring protection of the total population-at-risk in the sector. Assuming workers affected by the excursion limit perform one two-hour brake job per day—during which peak exposures—OSHA estimates that use of the spray will reduce 8-hour TWA exposures from around 0.13 f/cc to 0.06 f/cc (Ex. 84-263). Based on the mortality rates for asbestos exposure given in the RIA, OSHA estimates that, in brake repair, approximately 3 of the 39 avoided fatalities that were estimated in the RIA should be assigned to the benefits of the proposed excursion limit standard.

In ship repair, OSHA assumed that all workers were provided vacuum cleaners and air-purifying respirators for the purpose of reducing TWA exposures. This equipment carries protection factors ranging from 10 to 1,000 and therefore would also protect employees from high excursion levels (see Asbestos RIA, Tables G-16 and G-18). For this reason, OSHA projects that few ship repair workers are exposed above the excursion limit.

In new construction, only asbestos/cement pipe installers are expected to be currently exposed to high excursion

levels at frequent intervals. The estimated 16,000 workers involved in a/c pipe installation can be divided into 3,200 crews (five per crew). In the absence of controls, high fiber exposures can occur during the machining and cutting of pipe prior to installation. Employers experiencing excursion-level exposures can use shrouded tools during these activities to comply with paragraph (g)(2)(i) in the asbestos construction standard. Given the trend to have most of the machining done by the fabricator, and given the expense of purchasing shrouded tools, it is anticipated that only one-third of the crews will cut pipe at the worksite. Therefore, assuming one person on each crew is involved in cutting pipe, the population at risk in a/c pipe installation is expected to be around 1,100.

During most asbestos abatement, demolition and renovation jobs, the use of engineering controls and respirators to meet the TWA PEL will also reduce exposures to below the excursion limit (see Asbestos RIA, Table G-20). OSHA anticipates that the excursion level will be exceeded only during occasional small-scale jobs, where these controls are not needed to meet the TWA PEL. Similarly, in two activities within new construction, a/c sheet installation and asbestos roofing installation, the use of shrouded tools, vacuums, clothing and respirators needed to meet the TWA PEL are expected to prevent exposure levels from exceeding the excursion limit in all but a few short-duration activities. Thus, some minor, non-quantifiable benefits are expected in these sectors once the existing engineering controls and respirators are applied in the small jobs.

The overall population at risk from exceeding the excursion limit in construction maintenance is estimated at 32,000. In commercial/residential building maintenance, approximately 90,000 workers in small-scale jobs are potentially exposed to asbestos (RIA, p. F-20). However, OSHA believes that only about ten percent of these workers will be routinely exposed to asbestos.

Thus, OSHA estimates that approximately 10,000 employees, working in two-person crews, will specialize in small-scale repair and renovation work involving contact with asbestos. In routine maintenance for general industry, of the approximately 220,000 workers exposed to asbestos and not equipped with respirators, an estimated ten percent, or 22,000, are assumed to be exposed to levels above the excursion limit.

Thus, the overall population at risk to exposures above the excursion limit is expected to be approximately 36,000 workers (not counting the population at risk in automotive repair). In the construction maintenance sectors affected by the standard, exposures are not expected to occur on a daily basis. For the purpose of estimating the incremental benefits of an excursion limit, the population at risk must be expressed as the number of full-time equivalent workers. Accordingly, OSHA estimates that the 36,000 workers with some exposures above the excursion limit translate to the equivalent of 10,000 full-time employees.

To develop a quantitative estimate of the expected incremental benefits of an excursion limit, OSHA conservatively assumes that the use of engineering controls, respirators and other measures will reduce 8-hour exposure levels by a factor of ten. Table 1 shows the number of expected cancer deaths for each sector at 0.13 f/cc TWA—estimated as the current mean exposure level for all industry establishments impacted by the excursion limit—and .013 f/cc TWA, the level after the tenfold exposure reduction. For each exposure level the number of expected deaths in manufacturing and construction is summed. Taking the difference of these two sums yields the figure for avoided cancer deaths. As indicated in the table, OSHA's risk assessment model predicts that an excursion limit of 1 f/cc for thirty minutes will prevent approximately two cancer fatalities per year in the indicated sectors (not counting the benefits in automotive repair discussed above).

TABLE 1.—ESTIMATED EXCESS CANCER DEATHS AVOIDED DUE TO PROMULGATION OF A THIRTY-MINUTE EXCURSION LIMIT OF 1/FCC FOR ONE YEAR \*

Sector	No. of full-time equivalent workers	Expected cancer death at .131/cc TWA <sup>b</sup>	Expected cancer deaths at .013 f/cc TWA <sup>c</sup>	No. of cancer deaths avoided
Primary manufacturing.....	784	0.152	0.016	0.136
Secondary manufacturing.....	1,919	0.368	0.037	0.331
Construction.....	6,980	1,340	0.133	1.207



TABLE 1.—ESTIMATED EXCESS CANCER DEATHS AVOIDED DUE TO PROMULGATION OF A THIRTY-MINUTE EXCURSION LIMIT OF 1 f/cc FOR ONE YEAR <sup>a</sup>—Continued

Sector	No. of full-time equivalent workers	Expected cancer death at 131 f/cc TWA <sup>b</sup>	Expected cancer deaths at 0.13 f/cc TWA <sup>c</sup>	No. of cancer deaths avoided
Total.....	9,693	1.86	0.186	1,670

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

<sup>a</sup> Automotive repair workers exposed to excursion levels are excluded from the analysis in the table.

<sup>b</sup> Based on exposure data in the Asbestos RIA [App. G], OSHA estimates that the population at risk from short-term levels experiences a mean of 0.13 f/cc TWA.

<sup>c</sup> Use of engineering controls and respirators are assumed to result in a tenfold reduction in TWA exposures.

Moreover, as explained in Chapter V in the Asbestos RIA, the estimated number of lives saved understates the total benefits derived from lowering worker exposure. Additional expected benefits (but not quantified) should appear in the form of reduced worker disability from asbestosis and a reduced incidence of asbestos-related diseases in groups outside the directly exposed work force.

#### B. Compliance Costs

OSHA estimates that the total annual

compliance costs for achieving a thirty-minute excursion limit of 1 f/cc in the sectors shown in Table 1 will be approximately \$29 million. (Some additional compliance costs in automotive repair were already estimated in OSHA's original RIA and are discussed below.) Table 2 shows the number of exposed workers in each industry sector and the breakdown of compliance costs by regulatory provision. In general, the exposure distributions and the compliance cost formulae presented in the RIA were

reemployed here. The majority of the costs will occur in the construction industry, where the annual costs are estimated to be \$23 million. Primary and secondary manufacturing are expected to incur annual costs of \$2.0 million and \$4.4 million, respectively. In ship repair, additional compliance costs are expected to be insignificant because it is assumed that most firms already use adequate controls in order to comply with the existing provisions of the asbestos standard.

TABLE 2.—ASBESTOS EXCURSION LIMIT<sup>aa</sup> Annual Compliance Costs [By sector and provision, in dollars]

Sector	Number of exposed workers	Engineering controls	Shower/change rm total	Respirators	Clothing	Monitoring	Medical surveillance	Training	Grand total
<b>Primary manufacturing:</b>									
A/C pipe.....	29	0	34,557	4,923	21,750	2,712	373	208	64,523
A/C sheet.....	20	0	23,833	3,395	15,000	3,255	514	144	46,138
Textiles.....	3	0	3,575	509	2,250	1,505	39	22	7,899
Floor tile.....	24	0	28,599	4,074	18,000	1,505	308	172	52,658
Coatings.....	102	0	121,547	17,314	76,500	35,941	1,310	732	253,344
Friction.....	510	0	607,733	86,569	382,500	27,664	6,551	3,662	1,114,679
Paper.....	39	0	46,474	6,620	29,250	11,933	501	280	95,058
Gaskets.....	32	0	38,132	5,432	24,000	9,764	411	230	77,968
Plastics.....	25	0	29,791	4,244	18,750	2,006	321	180	55,291
Subtotal.....	784	<sup>b</sup> 0	934,241	133,079	588,000	96,284	10,070	5,629	1,767,303
<b>Secondary manufacturing:</b>									
A/C sheet.....	35	0	41,707	5,941	26,250	10,598	450	251	85,197
Textiles.....	17	0	20,258	2,886	12,750	23,500	218	122	59,734
Friction.....	150	0	178,745	25,462	112,500	16,798	1,927	1,077	336,509
Gaskets.....	997	0	1,188,058	169,234	747,750	121,368	12,806	7,158	2,246,378
Plastics.....	245	0	291,950	41,587	183,750	102,890	3,147	1,759	625,084
Auto remanufacturing.....	475	0	566,026	80,628	356,250	83,401	6,101	3,411	1,095,817
Subtotal.....	1,919	<sup>b</sup> 0	2,286,744	325,738	1,439,250	358,556	24,650	13,778	4,448,717
<b>Construction:</b>									
A/C pipe installation.....	1,100	1,650,000	0	N/R	N/R	0	113,916	15,796	1,779,712
Routine maint. in C/R.....	10,000	7,417,947	0	2,238,004	3,450,000	0	1,035,600	143,600	14,285,151
Routine maint. in GI.....	22,000	147,400	0	5,330,809	660,000	0	0	315,920	6,453,929
Subtotal.....	33,100	9,215,347	<sup>c</sup> 0	7,568,612	4,110,000	<sup>d</sup> 0	1,149,516	475,316	22,518,791
Total.....	35,803	9,215,347	3,220,985	8,027,430	6,137,250	454,840	1,184,236	494,724	28,734,811

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

<sup>a</sup> Compliance costs in automotive repair are not reported in the table (see discussion in text).

<sup>b</sup> No additional controls are expected beyond those required to meet the TWA PEL.

<sup>c</sup> Additional decontamination facilities are assumed not to be necessary because either they would have been required to meet the existing standard or because the operations are excluded due to their small-scale, short-duration nature.

<sup>d</sup> Employers are expected to minimize the need for additional monitoring through the use of objective data or by equipping their workers with air-supplied respirators.



## 1. Construction

Annual compliance costs in construction are estimated at \$23 million to protect approximately 33,000 workers in asbestos/cement pipe installation, routine maintenance in commercial/residential buildings, and routine maintenance in general industry. The Two maintenance sectors in construction account for over 92 percent of the costs in construction, with a/c pipe installation accounting for the remaining cost. Asbestos abatement, demolition and renovation are not expected to incur additional compliance costs. With the exception of a minor number of small-scale jobs, exposures in those sectors, and in a/c sheet installation and asbestos roofing installation, are projected to remain below the excursion limit through the use of engineering controls and respirators put in place to meet the TWA PEL. During these jobs, additional use of existing controls and respirators will be required without any incremental costs beyond those previously estimated.

As shown in Table 2, compliance costs for additional engineering controls, respirators and disposable clothing in construction are expected to total \$9.2 million, \$7.6 million and \$4.1 million, respectively. No decontamination costs are anticipated because the activities in these sectors are of short duration and are exempted from this provision.

In a/c pipe installation, it is anticipated that short-term exposures will be reduced through the use of shrouded tools during machining and cutting of pipe. In the maintenance sectors, supplied-air respirators, glove bags, HEPA vacuums and filters, and disposable clothing and gloves will protect workers during activities when fiber concentrations may exceed the excursion limit. Office workers and the general public in commercial and residential buildings (c/r) will also benefit from signs alerting them to the hazards at the worksite. Applying a unit cost of 50 cents for each sign put in place, the costs of warning signs are expected to total \$1.8 million annually in c/r maintenance.

In routine maintenance in general industry, OSHA estimates that approximately 85,000 gasket projects will face asbestos level excursion. Most of these jobs will be small and therefore will require only one sign in most cases. At a unit cost of 50 cents per sign, the total compliance cost for the regulated-area provisions will be approximately \$43,000 in gasket maintenance.

To avoid the costs of monitoring exposure levels at each project, it is

assumed that construction maintenance crews will purchase supplied-air respirators and compressors at unit costs of \$278.25 and \$1,000, respectively, and capitalize them over five years. In addition, firms in commercial/residential maintenance and a/c pipe installation will incur costs associated with the medical and training provisions when the excursion limit is exceeded. (Workers in routine maintenance in general industry are exempted from the medical surveillance provisions because they will be exposed for fewer than 30 days.) Assuming a medical exam/lost-work-time cost of \$100 and recordkeeping costs of around \$3.50 per employee, annual medical costs for these workers are estimated to be approximately \$1.1 million.

Training costs in construction are based on the assumption that a supervisor (at a wage rate of \$13.10 per hour in construction and \$17.11 per hour in general industry (routine maintenance)) will conduct one-half hour training sessions for groups of five employees (at an hourly wage rate of \$11.91 in construction and \$16.37 in general industry). Added to these costs of instruction are recordkeeping costs (estimated in the RIA, p. VI-41, to be \$0.85 per record in construction and \$1.50 per record in general industry), bringing the total cost of training in construction to around \$475,000.

## 2. General Industry

OSHA estimates annual compliance costs of \$6.2 million in primary and secondary manufacturing. As noted above, the ship repair sector should not experience costs to comply with the excursion limit since controls currently in use to meet the TWA PEL prevent thirty-minute levels from exceeding 1 f/cc. OSHA expects automotive repair, however, to incur some compliance costs from the use of solvent spray to meet the excursion limit. Assuming one-third of the affected employees are currently in compliance, and assuming (as in the RIA) that approximately thirty seconds of worker time is spent spraying an entire can of solvent spray (at \$1.75 per can) on the brake surface to minimize the number of airborne fibers, compliance cost is estimated to be \$4.0 million in this sector. As noted above, these compliance costs were already included in the RIA for the TWA permissible exposure level. Hence, the costs are not incremental as are the excursion limit costs in the other sectors and therefore are not reported in Table 2.

Half of the total cost in general industry, \$3.1 million, or \$1,192 per worker, will be spent on

decontamination of workers after high fiber exposures. To comply with the decontamination provisions, employers are expected to expand shower rooms and change rooms (see pp. VI 15-16 in the RIA for details of the calculation) in order to accommodate the estimated 2,700 workers who are exposed below the 0.2 f/cc TWA but above the 1 f/cc excursion limit. In addition, OSHA assumed that each of those workers would be given one change of disposable clothing and gloves each day, at a cost of \$3 per set.

Initial monitoring is necessary to help firms determine the need for respiratory protection and to provide the objective data required by the standard where such data does not currently exist. Because exposure levels in primary and secondary manufacturing will occasionally exceed 1 f/cc for thirty minutes despite the presence of engineering controls, OSHA assumed that all employers will perform initial monitoring at each workstation in all establishments. This assumption tends to overstate actual costs because in some instances other objective data will be available. Based on the expected variation in these exposures, OSHA estimates that approximately 50 percent of the workstations will have exposures above the excursion limit. These workstations are expected to continue monitoring twice a year and to equip their workers with cartridge respirators during peak exposure periods.

For the workstations where exposures exceed the excursion limit but not the TWA action level, medical surveillance and training would be required. OSHA estimated that half of the workers expected to exceed the excursion limit will be affected by these provisions for the first time (the balance of these workers are in establishments where these costs are currently required under the existing rule). Annual medical and training costs for these workers is calculated to be about \$55,000.

## IV. Economic and Environmental Impacts

OSHA anticipates no major economic or environmental impacts from the promulgation of the excursion limit. In most manufacturing sectors, estimated annual compliance costs fall below \$100,000. The highest compliance costs in manufacturing will be felt in secondary gasket production and primary friction products. In these two sectors the additional annual compliance costs are not expected to exceed one-half of one percent of annual revenue. Thus, OSHA does not anticipate a significant economic impact



in manufacturing due to compliance with the excursion limit.

Although automotive repair is expected to face compliance costs to meet the excursion limit, these costs were estimated previously and were applied to the economic impact computed in the RIA. The overall economic impact on this sector as described in the original RIA was not significant.

Compliance costs in the construction industry are expected to be higher than in general industry. OSHA estimates that annual compliance costs in a/c pipe installation will be approximately \$1,500 per exposed worker, while the per-worker costs in routine maintenance in commercial/residential buildings and in routine maintenance in general industry will be \$1,400 and \$300, respectively. However, OSHA expects that firms within the affected sectors will be able to pass along compliance costs to the building owners and project developers. As noted in OSHA's Asbestos RIA, higher construction and maintenance costs are routinely passed forward to owners and developers. Further, annual compliance costs in these sectors represent a minor percentage of the total value of the structure being built or repaired. Therefore, it is anticipated that the impact of the excursion limit on final rents and prices will be negligible.

In accordance with the Regulatory Flexibility Act, OSHA has assessed the economic impact of a 1 f/cc excursion limit on small establishments and certifies that those establishments will not be adversely affected. In addition, OSHA does not foresee a significant environmental impact from the excursion limit provision.

#### V. Feasibility of Measuring Excursion Limit

OSHA also has determined, based on the rulemaking record of the revised standard, that the lowest feasible short term limit which can be reliably measured for purposes of the OSHA compliance programs, is 1 f/cc measured over 30 minutes. OSHA reaffirms that the OSHA Reference Method (ORM) provides the optimal technology for assessing worker exposure to airborne asbestos.

A brief review of the ORM is necessary to an understanding of this determination. The ORM is based largely on NIOSH Method 7400, a method widely acknowledged in the record as superior to the earlier NIOSH P&CAM 239 method previously prescribed by OSHA [Exs. 117-A; 123-A; 328; 330; Tr. 6/20, p. 10; Tr. 6/21, p. 186; Tr. 7/81, p. 69].

In the preamble to the revised standards OSHA explained the relationship of the ORM to NIOSH P&CAM 239 and to the revised NIOSH 7400 method (51 FR 22688).

Because the NIOSH 7400 method takes advantage of technological improvements that have been adopted worldwide for asbestos sample analysis, but retains the same counting rules as the NIOSH P&CAM 239, OSHA has used the major features of the NIOSH 7400 method as the basis for developing a required standardized sampling and analytical method measuring airborne asbestos concentrations. The method required by the revised asbestos standards for both general industry and construction, referred to as the OSHA Reference Method (ORM), is detailed in the mandatory Appendix A of each standard. (§ 1910.1001 and 1926.58).

These appendices require that the employer collect airborne asbestos samples using 25 mm diameter mixed cellulose filters and a 50 mm electrically conductive extension cowl. Samples must be analyzed using a phase contrast microscope calibrated using a phase shift test slide and equipped with a Walton-Beckett graticule. The ORM also requires that filter samples be prepared using acetone-triacetin clearing solution and be counted in accordance with the rules specified.

The ORM differs from the NIOSH 7400 method in two important respects. The ORM mandates a flow rate for asbestos sampling of between 0.5 and 2.5 lpm, which is similar to the flow rate range permitted by the NIOSH P&CAM 239 method (1.0 to 2.5 lpm). In contrast, the NIOSH 7400 method permits the use of any flow rate between 0.5 lpm and 16 lpm. Secondly, the ORM permits the use of the large 37 mm diameter filter when the employer has written justification explaining the need to use a larger filter to obtain readable samples. Both of these departures from the NIOSH 7400 method were made in response to commenters who pointed out that the use of high flow rates (e.g., 4 lpm) combined with the use of the smaller 25 mm filter may result in samples that are too overloaded with dust to permit the counting of asbestos fibers. This is particularly true in construction where nonasbestos dust particles released to the air as a result of demolition or renovation activities may interfere with analyzing samples that were collected using high flow rates and the smaller filter. OSHA believes that, by limiting the flow rate and permitting the use of the 37 mm filter in certain circumstances, employers will be more likely to obtain readable samples in dusty environments. As explained

below however, the 37 mm filter will be allowed to measure short term exposures only when they are above the EL. Since short term exposures in impacted construction activities are likely to exceed the EL, OSHA believes that many employers will continue to have the flexibility to pick the filter and flow rate to best assure reliable measurement results. In addition, record evidence suggests that the use of high flow rates may increase electrostatic charges in the filter apparatus, preventing some fibers from reaching the filter and resulting in lower fiber counts [Ex. 84-478; Tr. 7/8, p. 99]. OSHA adopted these specific provisions to establish uniformity to the asbestos exposure determination.

To determine whether the ORM could be used to analyze short-term samples, and what the lowest feasible excursion limit is, the limit of reliable detection for 15- and 30-minute samples was evaluated. OSHA calculated the lowest reliable limit of quantitation using the following formulas:

$$E = \frac{(f)}{(n)(Af)}$$

where:

E is the fiber density in fibers per square millimeter;

f is the total fiber count;

n is the number of microscope fields examined;

Af is the field area (0.00785 mm<sup>2</sup> for a properly calibrated Walton-Beckett graticule); and

$$C = \frac{(E)(Ac)}{(V)(1000)}$$

where:

E is as above;

Ac is the effective area of the filter (nominally 385 mm<sup>2</sup> for a 25-mm-diameter filter and 855 mm<sup>2</sup> for a 37-mm-diameter filter; and

V is the sample volume.

Prior to the ORM, analysts could use different procedures which resulted in different asbestos counts from one laboratory to the next. In addition the ORM method contains procedures that reduce variability in asbestos counts within a laboratory. In the final rule OSHA acknowledged that the use of the phase contrast light microscope method was approaching its limits of use with the new PEL, but OSHA determined the method, with the procedures required by the ORM, could reliably measure 8 hour TWA exposures at 0.1 f/cc for purposes of the OSHA compliance program.



Using the minimum filter loading that is suggested for the ORM (i.e., 80 fibers/100 fields, or 100 fibers/mm<sup>2</sup>), OSHA examined the relationships among these two sampling periods (15 and 30 minutes), the two filter sizes (25- and 37-mm in diameter), and various possible flow rates ranging between 2.5 lpm and 0.5 lpm.

The results set out in the Table show that 1 f/cc measured over 30 minutes is the lowest level which can be reliably measured for most operations likely to be affected by an excursion limit.

The ORM has been designed to provide needed flexibility to reliably measure exposures in the wide variety of operations where asbestos, tremolite, anthophyllite and actinolite are used. As explained in the preamble to OSHA's revised standards, filter overload or interference by other particles in dusty environments is accommodated by the ORM by permitting the use of the 37 mm filter when justified, and by reducing the flow rate. OSHA believed that in most cases reducing the flow rate will minimize filter overload for TWA exposure measurements, but allowed the 37 mm filter for stubborn situations, with written justification (51 FR 22690-1).

The major industries and operations affected by the imposition of an excursion limit; construction, and maintenance and brake repair in general industry, expose employees to the kinds of dusty environments which may result in filter overload. In addition, short term bursts of dust containing asbestos may contribute to overloading the filter.

The flexibility needed to reliably measure excursions in these operations, requires the ability to sample at low flow rates. Table X shows that only at the relatively high flow rates of 1.6 lpm and above are levels less than 1 f/cc over 30 minutes quantifiable. We note, based on the results in the Table that the use of the 37 mm filter is precluded for measuring short term limits down to 1 f/cc over 30 minutes. OSHA therefore finds 1 f/cc measured over 30 minutes is the lowest level feasibly measured for the operations impacted by this amendment.

OSHA notes that these considerations apply to measurements at or below the excursion limit, the level which must be capable of being measured for most enforcement and compliance purposes. The employer is not precluded from using the 37 mm filter to reliably measure short term exposures above the excursion limit so long as the level measured falls within the limits or reliability set out in the table. OSHA therefore will allow the use of the 37 mm filter for measuring short term exposures

for the same reasons and requiring the same justification as time-weighted average measurements. If an employer uses measurement results to show exposures below the excursion limit, he must use the 25 mm filter.

Also, OSHA has determined that employers can comply with the 1 f/cc excursion limit within the accuracy requirements of the revised asbestos standards. As discussed at length in the preamble to the final rules (see 51 FR 22686-22691), the key factor in sampling precision is fiber loading. Using the minimum loading suggested by the ORM (80 fibers/100 fields, or 100 fibers/mm<sup>2</sup>), employers can be confident that they are measuring the actual airborne concentrations of asbestos in their workplaces within a standard sampling and analytical error (SAE) of  $\pm 25\%$ .<sup>1</sup>

OSHA points out, as stated earlier, that a superficial contradiction exists between OSHA's finding that 1 f/cc measured over 30 minutes is the lowest reliable level of detection, and data cited regarding lower levels in brake repair (51 FR 22662). Those measurements, mainly derived from studies, were made by NIOSH with expert analytical capabilities under controlled conditions. In addition these measurements do not reflect the differences in results that occur due to common statistical sampling factors. As stated above, OSHA does not believe, based on a full rulemaking record, that such low levels can reliably be measured by employers for regulatory requirements. OSHA considers the recorded levels indicative of a range of exposures for the brake repair industry, and has not used these results for any other regulatory purposes.

Thus, OSHA's finding that the excursion limit of 1 f/cc for 30 minutes is the lowest that can be reliably measured is based upon the enforceability of the limit, recognizing that in some situations, lower exposures could theoretically be measured and are reported in the rulemaking record. In reaching this decision, OSHA has relied upon the asbestos rulemaking record, the equations described above being part of the record.

<sup>1</sup> OSHA evaluates the precision of the ORM (implemented as NIOSH 7400) as follows: NIOSH has estimated that the overall precision, expressed as the coefficient of variation (CV), of the 7400 method ranges from 0.13 to 0.115 for samples in which 80 to 100 fibers per 100 fields have been counted [Ex. 84-444]. For filters at the minimum loading suggested by the ORM, (80 fibers/100 fields) the CV, is 0.13. This yields a 95% One Sided Upper Confidence Interval of 21.4%. This is lower than the SAE of 25% currently listed for this method in OSHA's Industrial Hygiene Technical Manual.

## VI. The Process for Promulgating the Excursion Limit

As the foregoing discussion indicates, the *Public Citizen* Court explicitly rejected OSHA's reliance in the EtO standard on the need for a "dose-rate effect" to justify an excursion limit. OSHA based its determination in the revised asbestos standards on the same rationale. The Agency hereby withdraws the determination. Instead, OSHA has made a new determination based on appropriate criteria and a review of the rulemaking record concerning whether and what excursion limit should be required in the revised asbestos standards.

Table X shows the results of OSHA's analysis.

TABLE X—RELIABLE QUANTITATION LIMITS FOR SHORT-TERM ASBESTOS SAMPLING USING THE OSHA REFERENCE METHOD

[fiber density of 100 f/mm <sup>2</sup> ]		
Flow rate (liters/min)	Sampling time	Lower limit of quantification (fibers/cc)
For 25 mm filters:	2.5	1.05
	2.0	1.31
	1.6	1.63
	1.0	2.61
	0.5	5.23
	2.5	.51
	2.0	.65
	1.6	.82
	1.0	1.31
	0.5	2.61
	2.5	2.32
	2.0	2.91
For 37 mm filters:	1.6	3.63
	1.0	5.81
	2.5	1.16
	2.0	1.45
	1.6	1.82
	1.0	2.91
	30	

OSHA's previous STEL determination did not apply the criteria which the Court held must compel the issuance of a short term limit. However, these



criteria; feasibility of the limit and further reduction of significant risk were raised by OSHA in its proposal (see 49 FR 14116, 14122), and were the subjects of data and comment submitted to the record as well as testimony at the hearing. Therefore all aspects of OSHA's statutory rulemaking requirements, consisting of notice, comment and hearing, have been compiled with concerning whether OSHA must issue an excursion limit (See section 6(b) of the Act).

Ample notice on all relevant issues was provided by OSHA. In its proposal the Agency stated it was considering reducing the prior "ceiling limit" of 10 f/cc to a limit based, in large part on the TWA-PEL which would be required. OSHA specifically mentioned the possibility of imposing a 5 f/cc limit measured over 15 minutes if a 0.5 f/cc TWA-PEL were chosen and a 2 f/cc "ceiling limit" if a 0.2 f/cc limit were chosen, and requested comments on these as well as "other suggested limits". OSHA noted that ceiling limits "may be necessary to ensure further that employees are not exposed to dangerous concentration(s) of asbestos fibers" and also asked for "(i) information concerning the feasibility of achieving (the limits mentioned or others) particularly in industries with variable exposures" (49 FR at 14123).

Comment and evidence submitted to the record responded to all relevant issues and provided an ample evidentiary base for OSHA to make determinations regarding a revised excursion limit for asbestos exposure. Participants representing both industry and employee groups recommended that OSHA adopt a "short term limit ranging from 0.5 f/cc measured over 30 minutes" (BCTD, Exh. 330 at 155), to 5.0 f/cc measured over 15 minutes (AIA/NA, P.H. brief, III-45).

Data introduced during the rulemaking, as discussed previously, shows the feasibility of the limit adopted. Most data relates to service industries and construction. The relative scarcity of data for general industry was explained by AIA/NA as resulting from the fact that "at least in manufacturing plants, there are few routine operations where exposures are episodic. Consequently, the occurrence of peak exposures is generally an unexpected event such as an equipment breakdown." (AIA/NA, P.H. brief III-44).

Data used in OSHA's risk assessment and regulatory analysis similarly show that the imposition of an excursion limit of 1 f/cc measured over 30 minutes will further reduce the significant risk

remaining after a TWA exposure limit of 0.2 f/cc is achieved.

OSHA finds pursuant to 5 U.S.C. 553(b), that additional notice and comment are unnecessary. OSHA believes that additional notice of the intent to consider an excursion limit would merely duplicate the prior notice. As discussed above, public participation has already taken place during the extensive rulemaking held to develop the 1986 standards.

#### VII. Summary and Explanation

The requirements set forth in this notice are those which, based on currently available data, OSHA believes are necessary and appropriate to provide additional protection to employees who are now exposed to airborne concentrations of asbestos at levels that pose a significant risk of material impairment to their health. OSHA has considered all data and recommendations on the short-term limit issue contained in the asbestos docket (H-033).

The following sections discuss new individual requirements of the asbestos standard. The final standard adopts an additional permissible exposure limit of 1 f/cc excursion limit averaged over a sampling period of 30 minutes. As with the TWA-PEL, engineering controls and work practices when feasible are the preferred methods to reach the excursion limit.

Other provisions of the revised standards are being amended to also require certain ancillary protective actions when the excursion limit is exceeded. For example, regulated areas must be established, and decontamination facilities be provided for employees whose exposure exceeds the EL. Employers must measure the exposure of employees to ascertain whether the EL is being exceeded. For purposes of this preamble, OSHA is combining the discussion of general industry and construction standard provisions which relate to the same subject matter. Of course, the respective regulatory texts remain separately designated and codified. For example, the discussion on both the general industry and construction revised requirements on monitoring is combined. Any differences in application or text between these industries will be noted in the discussion, as well as, where required, in the respective regulatory texts. OSHA believes that this combined discussion will aid interpretation of the requirements since a unified rationale, where appropriate, is presented, and differences are highlighted where they exist.

#### *Permissible Exposure Limit, Paragraph (c)(2), (General Industry and Construction)*

In the final amendment, OSHA establishes a 1 f/cc excursion limit for asbestos and revises existing paragraph (c) to incorporate an excursion limit and to clarify that the excursion limit is to be determined as a time-weighted average over a sampling time of 30 minutes.

In the proposed rule of 1984, OSHA stated that it was considering a ceiling limit of 2.0 f/cc for a 15-minute period if a TWA of 0.2 f/cc was established. The 1984 proposal specifically asked participants for recommendations for specific ceiling levels. In response, some participants recommended a 5 f/cc ceiling limit (Exs. 92-045, 90-180); a ceiling limit equivalent to 10 times the PEL (Ex. 127) and the AFL-CIO recommended that OSHA should lower the ceiling level for the asbestos standard proportionally to the reduction in the permissible exposure limit which would be 0.5 f/cc, based on the AFL-CIO recommended 0.1 f/cc time-weighted average PEL (Ex. 335, p. 46).

Based on the rulemaking record of the revised standard, OSHA determined that the lowest feasible short term level which can be reliably measured using the OSHA Reference Method (ORM) is 1 f/cc measured over 30 minutes. OSHA has also determined that a 1 f/cc EL is effective at lowering total asbestos dose below that achievable through the 0.2 f/cc 8-hour TWA alone. OSHA has determined that, based on the evidence in the record, a 1 f/cc 30 minute EL is feasible and can be reliably and consistently monitored, using available monitoring methodology. There is insufficient evidence on the feasibility of monitoring and attaining lower short-term exposure levels.

With respect to the length of the permitted sampling period, OSHA believes that collection of asbestos over 30 minutes is necessary to ensure that a sufficient amount of asbestos is collected for accurate analysis. It should also be noted that the newly established ceiling limit of 1 f/cc over 30 minutes, in terms of dose exposure to asbestos, is similar to the limits that OSHA considered in the proposal, that is, a 2 f/cc ceiling for 15 minutes.

OSHA has determined that exposure to asbestos under the present standard still presents a significant risk of material impairment to employees. Based on the current record, OSHA believes that compliance with the excursion limit as set forth in this paragraph will further reduce such significant risk.



*Exposure Monitoring: Paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(3), (d)(4), (d)(5), and (d)(7)(ii) (General Industry); Paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(ii), (f)(4) (Construction)*

Section 6(b)(7) of the Act (29 U.S.C., 655) mandates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposures at such locations and intervals, and in such a manner as may be necessary for the protection of employees." The primary purpose of monitoring is to determine the extent of employee exposures to asbestos.

Exposure monitoring informs the employer whether the employer is meeting the obligation to keep employee exposures below the established permissible exposure limits. Exposure monitoring also permits the employer to evaluate the effectiveness of engineering and work practice controls and informs the employer whether additional controls need to be installed. In addition, section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)) requires employers to notify promptly any employee who has been or is being exposed to toxic materials or harmful physical agents at levels that exceed those prescribed by an applicable occupational safety or health standard. Finally, the results of exposure monitoring are part of the information that must be supplied to the physician, and these results may contribute information on the causes and prevention of occupational illness.

Short-term monitoring is required whenever asbestos concentration will not be uniform throughout the workday and where high concentrations of asbestos reasonably may be expected to be released or created in excess of the EL. For example, in the manufacture of asbestos products, peak exposures could be expected during the dry handling of asbestos in manual debagging and charging operations, and during mechanical operations such as cutting, lathing, machining, sawing, drilling, and sanding. Peak exposures could also be expected during maintenance and repair activities where asbestos insulation is disturbed and in automotive repair during brake and clutch servicing.

Amended paragraphs (d)(1)(i) (general industry), and (f)(1)(ii) (construction), set out general requirements for monitoring required under the standards. They now require that the employer perform breathing zone sampling that is representative of the 30-minute short-term exposure of each employee as well as TWA exposures. Paragraphs (d)(1)(ii) (general industry), and (f)(1)(iii)

(construction), require that representative 30-minute short-term employee exposures be determined on the basis of one or more samples representing 30-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

These exposure monitoring provisions require that the monitoring yield information enabling the employer to determine the short-term exposure for each employee. However, it does not necessarily require separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor a fraction of such employees.

Representative personal sampling for employees engaged in similar work and exposed to similar short-term asbestos levels can be achieved by measuring the exposure of that member of the exposed group who can reasonably be expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees. However, employers may use any monitoring strategy that correctly identifies the extent to which their employees are exposed.

Paragraphs (d)(2)(i) (general industry), and (f)(2)(i) (construction), cover the duty to conduct "initial monitoring" so that employers have baseline data on which to determine whether they must conduct further periodic monitoring. Now employers must perform initial monitoring to determine accurately the short-term airborne concentrations of asbestos to which employees are exposed as well as TWA exposures. However, paragraph (d)(2)(ii) (general industry), contains a provision designed to eliminate unnecessary monitoring in general industry where employers have monitored short-term employee exposures to asbestos within a six-month period immediately preceding publication of this final rule in the *Federal Register*. In such cases initial monitoring may be excused, pursuant to paragraph (d)(2)(i) (general industry), if the results of the earlier monitoring show that their employees are not exposed to asbestos levels above the excursion limit.

The results of prior monitoring should be acceptable if such sampling was conducted in accordance with the monitoring provisions prescribed for excursion limit monitoring in this

standard: i.e., prior exposure determinations were made from breathing zone air samples that are representative of 30 minute short-term exposures (paragraph (d)(1)(ii) (general industry)), such determinations were associated with operations that are most likely to produce exposures above the excursion limit and if the monitoring method was accurate, to a confidence level of 95 percent, within plus or minus 25 percent for airborne concentrations of asbestos at the excursion limit of 1 f/cc.

Based on the discussion above, paragraph (d)(2)(ii) (general industry), permits the use of prior monitoring results to fulfill the initial monitoring requirements prescribed under paragraph (d), as long as such monitoring satisfies all other requirements of the new monitoring provisions.

In addition, paragraph (f)(2)(iii) (construction) provides an exemption from new initial monitoring for construction employers who have historical monitoring data (prior monitoring results). This exemption prevents these employers from having to repeat monitoring activity for construction jobs that are substantially similar to previous jobs for which monitoring was conducted. The data the employer uses, upon which judgments are based, must be obtained under workplace conditions closely resembling the process, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations. Additionally, paragraph (d)(2)(iii) (general industry), and (f)(2)(ii) (construction), excuse initial monitoring, when the employer can demonstrate, on the basis of "objective data", that the asbestos-containing product or material being handled cannot cause exposures above the action level and/or excursion limit under those work conditions having the greatest potential for releasing asbestos.

"Objective data" is limited to information demonstrating that a particular product or material containing asbestos or a specific process, operation, or activity involving asbestos, cannot release fibers in concentrations above either the action level or Eleven under worst-case release conditions. Objective data can be obtained from an industry-wide study, from manufacturers of asbestos-containing products or materials, or from laboratory test results of an asbestos containing product. For the employer who relies upon an industry-wide study, the data he uses must be obtained under workplace conditions closely resembling the processes, type of material, control



methods, work practices, and environmental conditions used and prevailing in the employer's current operations. Sampling and analytical procedures must conform to NIOSH and/or OSHA approved methods. The following three examples illustrate how an employer may use "objective data" to avoid the burden of initial monitoring.

In the automotive brake and clutch repair industry (the largest group of exposed workers) OSHA has determined that employers can successfully reduce their employees' exposures to asbestos to below the EL by employing the enclosed cylinder/HEPA vacuum system method as described in Appendix F to § 1910.1001. This determination is based on evidence in the rulemaking record (NIOSH Report 32.4, Ex. 84-263). The effectiveness of the vacuum/enclosure is dependent upon the mechanic being adequately trained so that he/she can perform the manufacturer's recommended sequence of steps with care and skill. OSHA therefore believes that employers in the brake and clutch repair industry will be able to avail themselves of exemption from initial monitoring in this amended standard if they conscientiously employ the enclosed cylinder/HEPA vacuum system.

In construction, where certain operations are short-term, intermittent in nature and generate peak exposures, data show that the use of shrouded tools may limit peak exposures to below the EL. An example of a detailed study, which can be used as objective data in lieu of exposure monitoring is Ex. 84-279. This study by the A/C Pipe Producers Association shows that under certain conditions (e.g. experienced workmen, properly maintained equipment, strict adherence to recommended work practices), cutting and machining A/C pressure and sewer pipe, using wet methods and a shrouded Doty tool will limit exposures to below 0.5 f/cc.

Small-scale, short-duration maintenance or renovation activities where the use of glove bags and wet methods are capable of keeping employee exposures to asbestos below the 0.1 f/cc action level and 1 f/cc EL is another situation where objective data could be used to obviate the need for exposure monitoring. The success of glove bag asbestos removal operations relies heavily on the use of workers specially trained in asbestos abatement working under well controlled conditions. Generally, two persons are required to perform removal especially with the use of heavy bags or in elevated locations. Diligence on the part

of management and employees is essential for minimizing contamination. Appendix G to § 1926.58 (51 FR 22785)—"Work Practices and Engineering Controls for Small-Scale, Short Duration Asbestos Renovation and Maintenance Activities", provides requirements for glove-bag procedures which when followed by employers, will satisfy the requirements for relying on "objective data" to be relieved from monitoring duties.

In general industry the amended provisions regarding initial monitoring, periodic monitoring, and termination of monitoring requirements relative to the excursion limit are found in paragraphs (d)(2)(i), (d)(3), and (d)(4). These provisions do not change the frequency and termination of monitoring provisions as they apply to the action level.

Where the employer has kept exposures below the applicable action level and excursion limit, the regulatory scheme normally excuses periodic monitoring. Existing paragraph (d)(5) (general industry) of OSHA's asbestos standard requires a new exposure determination for TWA exposures whenever there has been a change in production, process, control equipment, personnel or work practices that may result in new or additional asbestos exposures. With the adoption of an excursion limit, revised paragraph (d)(5) will also require additional excursion limit monitoring or determination where the employer suspects that workplace changes may increase short-term exposures. Short-term monitoring or an allowable determination should be repeated whenever situations arise or workplace changes occur which could increase employee short-term exposure.

In construction, initial monitoring and termination of monitoring requirements are found in paragraph (f)(2)(i) and (f)(4). As in general industry, the excursion limit does not change the current frequency of initial monitoring and termination of monitoring provisions.

The construction employer can lessen the burden of daily monitoring in a regulated area during removal, demolition and renovation operations, by providing all employees, within the regulated area, supplied-air respirators operated in the positive-pressure mode (§ 1926.58(f)(3)).

Paragraphs (d)(6) (general industry) and (f)(5) (construction) of the current asbestos standards require that monitoring methods be accurate to within plus or minus 25% of the OSHA Reference Method (ORM) results with a 95% confidence level as demonstrated by a statistically valid protocol. It is

clear to OSHA, based on data in record, that adoption of excursion limit accuracy requirements are necessary to ensure that employees exposures are adequately determined. OSHA also finds that the record supports adoption of accuracy parameters of plus or minus 25 percent at the 95 percent confidence level (See discussion *supra*).

OSHA, therefore, adopts in final paragraph (d)(6)(ii), the requirement that monitoring to a confidence level of 95 percent, shall be accurate, to within plus or minus 25 percent for airborne concentrations of asbestos at the 30 minute excursion limit of 1 f/cc.

Paragraph (d)(7)(i) (general industry) and (f)(6)(i) (construction) require that employers notify employees of the results of excursion limit monitoring performed pursuant to the standard. Such notification has been determined to be appropriate where TWA monitoring is performed, and is believed to be appropriate where excursion limit monitoring is performed.

*Regulated Areas: Paragraph (e)(1), (General Industry and Construction)*

The amended provision of paragraph (e) in the general industry standard now will require employers to designate as regulated areas any locations in their workplaces where occupational exposures to airborne concentrations of asbestos exceed the excursion limit as well as the TWA-PEL. This regulated area concept is consistent with other OSHA toxic substance standards.

The intent of OSHA's regulated area requirement is to protect employees from unknowingly entering areas where their exposures exceed either PEL. They will be warned of the need to wear respirators and to keep out if they have no need to be present.

Only authorized persons may enter regulated areas, which are required to be clearly marked to ensure that employees are aware of these locations. Warning signs are to be posted at each regulated area and at all approaches to regulated areas so that an employee can take the necessary protective steps before entering the area. The final standard gives employers an option of whether to use, for example, ropes, markings, temporary barricades, gates or more permanent enclosures to demarcate and limit access to these areas.

Paragraph (e) of the construction standard now requires employers to establish regulated areas whenever the PELs are exceeded. Regulated areas required by the standard can take two forms. For most employers who perform asbestos removal, demolition, or



renovation operations (other than small-scale short-duration), the regulated area must consist of a negative-pressure enclosure that will confine the asbestos fibers being generated to the area within the enclosure and will thus protect other employees and bystanders on the site from exposure to excessive levels of asbestos. For small-scale, short-duration removal, demolition and renovation operations and for asbestos work operations that do not involve asbestos removal, demolition, or renovation, the employer may simply demarcate the regulated area by posted signs that limit the number of employees entering the area.

Regulated areas do not have to be established when engineering and work practice controls reduce employee exposures to asbestos to levels below the standard's TWA and excursion permissible limits.

*Methods of Compliance: Paragraphs (f)(1)(i), (f)(1)(ii), (f)(2)(i) and (f)(2)(iv) (General Industry); Paragraphs (g)(1)(i), (g)(2)(ii), and (g)(3) (Construction)*

As discussed previously (see section on Summary of Regulatory Flexibility and Impact Analysis) OSHA believes that compliance with both the excursion limit and 8-hour TWA PELs can be accomplished by the majority of the asbestos industry through implementation of feasible engineering and work practice controls. OSHA, therefore, requires in paragraph (f)(1)(i) (general industry), and (g)(1)(i) (construction), of the amended asbestos standards, that the employer institute engineering and work practice controls to reduce and maintain employee exposure to or below the PELs except to the extent that such controls are not feasible. The amended rule further requires, in paragraph (f)(1)(ii) (general industry) and (g)(1)(ii) (construction), that wherever feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce exposure to the lowest levels achievable by those controls, and shall supplement them by the use of respirators. Based on available evidence, OSHA believes that the use of engineering and work practice controls will reduce employer exposure to or below the PELs for many work situations.

The methods used to control the EL will of course vary with the operation. In the revised general industry standard employers in the automotive brake and clutch repair industry can successfully reduce their employees' exposures to asbestos to below the EL by employing

the enclosed cylinder/HEPA vacuum system method as detailed in Appendix F to § 1910.1001.

In the revised construction standard, OSHA listed general categories of work practices and engineering controls acceptable for meeting the PEL (§ 1926.58(g)(1)). One activity likely to be impacted by this EL is maintenance and repair operations. These employers can use either singly or in combination: local exhaust ventilation equipped with HEPA filter dust collection systems, general ventilation systems, wet methods, vacuum cleaners equipped with HEPA filters, enclosure or process isolation, and prompt disposal of asbestos waste, all of which are listed in the previous cited provision.

In the installation of new construction materials such as A/C pipe and sheet the use of tools fitted with local exhaust shrouds connected to a HEPA vacuum have been demonstrated to reduce airborne asbestos concentrations significantly. Such shrouded tools are capable of reducing exposures below the excursion limit (Ex. 84-279).

OSHA in general believes that the imposition of the EL will not require the purchase of new controls or the development of new or different processes. Since many firms already use adequate controls in order to comply with the existing provisions of the asbestos standards, OSHA believes that meeting the EL will often require increased diligence in the application of existing controls and work practices implemented for the 8-hour TWA-PEL. These measures include such items as, but not limited to: (1) Frequently checking the effectiveness of exhaust systems, (2) increased attention to good housekeeping, employing a regular cleanup schedule using HEPA filtered vacuum cleaners, (3) periodic inspection and maintenance of process and control equipment to prevent system failure, (4) better trained workers to carry out their job functions with greater care and skill, and (5) improved supervision ensuring that work practices are carried out properly. In addition to the above measures the employer should consider shutting-off or temporarily modifying the air-hauling system to prevent the distribution of asbestos fibers to areas outside the work site and to other areas in the building.

Amended paragraph (f)(2)(i) (general industry) requires, where either PEL is exceeded, that the employer establish and implement a written program to reduce employer exposure to or below the excursion limit, by means of engineering and work practice controls,

and by the use of respirators when permitted.

It is OSHA's belief that the written plan for achieving the excursion limit is as essential as the written plan requirement adopted for achieving the TWA, in ensuring that the employer implement the necessary controls to reduce exposure. The plan also provides the information that would allow OSHA, the employer, and employees to examine the excursion limit control methods chosen and to evaluate the extent to which these planned controls are being implemented. As with the TWA written plan, the excursion limit compliance plan will be accessible to individuals designated in paragraph (f)(2)(iii) (general industry) for inspection and copying.

Final paragraph (f)(2)(iv) (general industry) and (g)(3) (construction), prohibits employee rotation as a means of compliance with the excursion limit for the same reasons that employee rotation is not permitted for compliance with the TWA. This prohibition is consistent with OSHA's view that this control strategy is not appropriate in occupational environments involving exposure to potential carcinogens. It results in exposure of a larger number of employees to levels of asbestos which still present a significant risk.

*Respiratory Protection: Paragraph (g)(1) (General Industry); Paragraph (h)(1)*

The amended standards provide that respirators be used to limit short-term employee exposure to asbestos in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations such as maintenance and repair activities or vessel cleaning or other activities for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the excursion limit.

These same requirements apply under the current standard with respect to respirator use in complying with the TWA, and are based on OSHA's established policy on compliance methodology (see preamble discussion in the current asbestos standard, 51 FR 22692).

OSHA has estimated that respirator use will be required to meet the excursion limit in a number of general industry operations as well as routine maintenance and repair in general industry and construction. So that respirator use will be effective OSHA



has incorporated the requirements of § 1910.134 into the revised standards supplemented by requirements such as fit testing protocols for respirator use. OSHA is concerned about relying on respirator use to meet the EL in the maintenance and repair sector of the construction industry. Although maintenance crews employed by larger building maintenance firms may often be specialized for asbestos work and trained accordingly, smaller building firms where work with asbestos is spotty and perhaps not always recognized may not institute adequate respirator programs.

The imposition of an EL hopefully will fill lapses in respirator programs in such firms, if only because a specific short-term limit corresponds with the asbestos exposure of most maintenance employees and thus highlights the need for protection, i.e., respiratory control.

Of course, engineering and work practice controls are still preferred, but as discussed earlier, for these operations respiratory protection often will be the feasible control strategy.

Other requirements under these paragraphs dealing with "Respirator selection" and "Respirator program," remain unchanged and apply where respirators are used to achieve the excursion limit.

**Protective Work Clothing:** Paragraphs (h)(1), (h)(3)(iii), (h)(3)(iv) (General Industry); Paragraphs (i)(1), (i)(2)(i), (i)(2)(ii) (Construction).

Existing paragraphs (h)(1) (general industry), and (i)(1) (construction), require that the employer provide to employees and ensure that the employees use appropriate protective clothing and equipment whenever the employees are exposed above the 8-hour TWA-PEL.

OSHA adopts in this rule, a similar requirement relative to the excursion limit, that protective clothing such as coveralls or similar full-body work clothing, gloves, head coverings, foot coverings, and face shields or other appropriate eye protection (when necessary to prevent eye irritation) be provided to employees exposed above the excursion limit.

It is OSHA's belief that protective clothing and foot coverings be required above the EL to prevent contamination of the employee's street clothing and shoes, so that exposure is not extended both beyond the time period and work area when the excursion limit was exceeded and beyond the workday and workplace.

The amended standards (h)(3)(iii), (h)(3)(iv) (general industry), and (i)(2)(i), (i)(2)(ii) (construction) require that the employer ensure that laundering of

contaminated clothing be done in a manner that prevents the release of airborne asbestos fibers in excess of the PELs, and to inform those who launder or clean the contaminated protective clothing to exercise caution to prevent the release of fibers in excess of the PELs. These provisions are designed to make clear the need to use proper care in handling of the contaminated clothing.

**Hygiene Facilities and Practices:** Paragraphs (i)(1)(i), (i)(2)(i), (i)(3)(i), (i)(3)(iii), (General Industry); Paragraph (j)(1)(iii), (Construction).

The amended provisions in general industry, require that the employer provide hygiene facilities and ensure that employees engage in good personal hygiene when asbestos exposures exceed both the 8-hour TWA-PEL and excursion limit. Specifically, employers are required to provide clean changerooms, showers, and lunchroom facilities and ensure that employees that work in areas where their exposures exceed either PEL, wash their hands and faces prior to eating, drinking and smoking and shower at the end of the work shift.

Similar provisions for hygiene facilities and good personal hygiene practices are found in the construction standard and are required whenever the 8-hour TWA-PEL or excursion limit is exceeded. However, unlike the general industry standard that requires the lunchroom be provided with a positive-pressure filtered air supply, the construction standard requires that airborne asbestos concentrations within lunchrooms be kept below the action level and excursion limit.

**Communication of Asbestos Hazards to Employees:** Paragraph (j)(5)(i) (General Industry); Paragraph (k)(3)(i) (Construction).

Existing paragraphs (j)(3)(i) (general industry) and (k)(3)(i) (construction) require that information and training concerning asbestos be provided to employees exposed at or above the action level. OSHA adopts in this rule, a requirement that information and training on asbestos be also provided to employees exposed at or above the excursion limit.

OSHA is adopting this provision based on the determination that informing employees through training, that high levels of asbestos might be released into the workplace, will better enable affected employees to take precautionary measures to protect themselves.

**Medical Surveillance:** Paragraphs (l)(1)(i), (l)(4)(i) (General Industry); Paragraph (m)(1)(i) (Construction).

The amended standard for general industry requires each employer to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the action level and/or excursion limit.

The amended standard for construction requires employers to implement the medical surveillance program only for employees required by the standard to wear negative-pressure respirators and for employees exposed to levels of asbestos at or above the action level and/or above the excursion limit for 30 or more days per year.

Since significant health risks are likely to be present at the excursion limit OSHA believes that it is essential that workers are provided medical surveillance whenever worker exposure exceeds the EL as well as at or above the action level. The initial and annual medical examination and evaluation is an important tool in protecting the worker exposed to asbestos by: detecting changes in a worker's physical condition, detecting biological effects of inhalation of asbestos as early as possible, providing a way to re-evaluate the workplace conditions, and evaluating the worker's suitability to continue doing the same job. For these reasons OSHA feels that the amended standards should require medical surveillance triggered above the excursion limit as well as by the action level.

**Dates,** Paragraph (o), (General Industry and Construction)

#### Effective Date

The amendments to the asbestos standards will become effective thirty (30) days following publication in the **Federal Register**. OSHA believes that a 30 day period between issuance of these standards and their effective date provides sufficient time for employers and employees to become informed of the existence of the standards and their requirements.

#### Start-up Dates

Since there was little record evidence on this issue, OSHA is using its experience in making a determination on the startup dates for these standards. The start-up dates discussed below provide the time required for employers to implement training programs and medical surveillance; to order and receive protective equipment and respirators; to construct changerooms, showers, laboratories, and lunchrooms;



to plan, order, receive and install engineering controls; and to implement work practice controls. OSHA believes that the dates set in this standard should be adequate in all but unusual circumstances.

OSHA believes that expeditious action by employers to achieve compliance with the provisions of these amended standards is warranted. Employees under the current standard are being exposed to asbestos at concentrations that present a significant risk of adverse health effects. Compliance with the excursion limit will further reduce total asbestos dose, and therefore the risk, to which employees are presently being exposed under the existing rule.

The information available to OSHA clearly indicates that, with few exceptions, affected employers can be reasonably expected to be able to implement feasible engineering and/or work practice controls that would bring their workplaces into compliance with the amended standards' excursion limit within 6-months from the effective date of this standard.

As stated earlier in this discussion OSHA believes that the imposition of the EL will not necessarily require the purchase of new controls or the development of new or different processes. Many firms already use adequate controls in order to comply with the existing provisions of the asbestos standards. Therefore, OSHA believes that meeting the EL will often require increased diligence in the application of existing controls and work practices implemented for the 8-hour TWA-PEL. Consequently, employers should be able to comply with this provision in the time-frame specified.

OSHA believes that employers should be able to achieve compliance with changerooms, showers, lavatories and lunchroom facilities within one year after the effective date. This time-frame appears to be reasonable, since it allows employers an additional six months after engineering controls are completed to install hygiene and lunchroom facilities, should engineering and work practice controls fail to reduce exposures below the EL. The amended standards like the current standards do not require the immediate installation of changerooms, showers, lavatories, and lunchrooms if installation of engineering controls would only make their use necessary for a few months.

Additionally, compliance with all the other requirements of the standard within ninety (90) days of the effective date also is believed by OSHA to be appropriate. In response to the

requirements set forth in OSHA's 1986 asbestos standard, asbestos employers have already instituted programs regarding training, compliance plans, respirators, exposure monitoring and work practices, recordkeeping, signs and labels, and regulated areas. Thus, compliance with new burdens imposed by adoption of the excursion limit within the periods specified is believed to be reasonable and appropriate.

If the time period for meeting any of these startup dates cannot be met because of technical difficulties, employers are entitled to petition the Assistant Secretary for a temporary variance under section 6(b)(6)(A) of the Act.

#### VIII. State Plan Applicability

Twenty-four states and U.S. territories have their own OSHA-approved occupational safety and health plans. These states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. These states and territories are to adopt a standard comparable to that of OSHA's within 6 months of the effective date of the Federal rule.

#### List of Subjects

##### 29 CFR Part 1910

Asbestos, Cancer, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

##### 29 CFR Part 1926

Asbestos, Cancer, Construction industry, Hazardous materials, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

#### IX. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), 29 CFR Part 1911 and Secretary of

Labor's Order No. 9-83 (48 FR 35736), 29 CFR Parts 1910 and 1926 are hereby amended as set forth below.

Signed at Washington, DC, this 8 day of September, 1988.

John A. Pendergrass,  
Assistant Secretary of Labor.

Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations are amended as set forth below:

#### X. Amended Standards

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

##### PART 1910—[AMENDED]

1. The authority citation for Subpart Z of 29 CFR Part 1910 continues, in pertinent part, to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, (29 U.S.C. 655, 657); Secretary of Labor's Orders No. 12-71 (36 FR 8754); 8-76 (41 FR 25050), or 9-86 (48 FR 35736), as applicable; and 29 CFR Part 1911.

2. In § 1910.1001, paragraphs (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7)(ii), (e)(1), (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(v), (f)(1)(vi), (f)(1)(viii), (f)(2)(i), (f)(2)(iv), (g)(1)(iii), (h)(1) introductory text, (h)(3)(iii), (h)(3)(iv), (i)(1)(i), (i)(2)(i), (i)(3)(i), (i)(3)(iii), (j)(4)(i), (j)(5)(i), (l)(1)(i), (l)(4)(i), and the last sentence of (o)(1) are revised and (o)(3) is added to read as follows:

§ 1910.1001 Asbestos, tremolite, anthophyllite, and actinolite.

(c) *Permissible exposure limits (PELS)*—(1) *Time-weighted average limit (TWA)*. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit*. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals, in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes.

(d) \* \* \*

(1) General.  
(i) Determinations of employee exposure shall be made from breathing zone air samples that are representative



of the 8-hour TWA and 30-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposures for each shift for each employee in each job classification in each work area. Representative 30-minute short-term employee exposures shall be determined on the basis of one or more samples representing 30 minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(2) Initial monitoring.

(i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, shall perform initial monitoring of employees who are, or may reasonably be expected to be exposed to airborne concentrations at or above the action level and/or excursion limit.

(ii) Where the employer has monitored after December 20, 1985, for the TWA and after March 14, 1988, for the excursion limit, and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has relied upon objective data that demonstrates that asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals is not capable of being released in airborne concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling, then no initial monitoring is required.

(3) *Monitoring frequency (periodic monitoring) and patterns.* After the initial determinations required by paragraph (d)(2)(i) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures may reasonably be foreseen to exceed the action level and/or excursion limit.

(4) *Changes in monitoring frequency.* If either the initial or the periodic monitoring required by paragraphs (d)(2) and (d)(3) of this section statistically indicates that employee exposures are below the action level and/or excursion limit, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(5) *Additional monitoring.* Notwithstanding the provisions of

paragraphs (d)(2)(ii) and (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit.

\* \* \*

(7) \* \* \*

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit had been exceeded.

(e) \* \* \*

(1) *Establishment.* The employer shall establish regulated areas wherever airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals are in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

\* \* \*

(f) \* \* \*

(1) \* \* \*

(i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and/or excursion limit, prescribed in paragraph (c) of this section, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and/or excursion limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(iii) For the following operations, wherever feasible engineering controls and work practices that can be instituted are not sufficient to reduce the employee exposure to or below the TWA and/or excursion limit, prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to or below 0.5 fiber per cubic centimeter of air (as an eight-hour time-weighted average) or 2.5

fibers/cc for 30 minutes (short-term exposure) and shall supplement them by the use of any combination of respiratory protection that complies with the requirements of paragraph (g) of this section, work practices and feasible engineering controls that will reduce employee exposure to or below the TWA and to or below the excursion limit prescribed in paragraph (c) of this section: Coupling cutoff in primary asbestos cement pipe manufacturing; sanding in primary and secondary asbestos cement sheet manufacturing; grinding in primary and secondary friction product manufacturing; carding and spinning in dry textile processes; and grinding and sanding in primary plastics manufacturing.

\* \* \*

(v) *Particular tools.* All hand-operated and power-operated tools with would produce or release fibers of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals so as to expose employees to levels in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section, such as, but not limited to saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems which comply with paragraph (f)(1)(iv) of this section.

(vi) *Wet methods.* Insofar as practicable, asbestos, tremolite, anthophyllite, or actinolite, shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers so as to expose employees to levels in excess of the TWA and/or excursion limit, prescribed in paragraph (c) of this section, unless the usefulness of the product would be diminished thereby.

\* \* \*

(viii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos, tremolite, anthophyllite, or actinolite shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne fibers of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals so as to expose employees to levels in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

\* \* \*

(2) \* \* \*

(i) Where the TWA and/or excursion limit is exceeded, the employer shall establish and implement a written



program to reduce employee exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

(iv) The employer shall not use employee rotation as a means of compliance with the TWA and/or excursion limit.

(g) \* \* \*

(1) \* \* \*

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA and/or excursion limit; and

(h) \* \* \*

(1) *Provision and use.* If an employee is exposed to asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals above the TWA and/or excursion limit, or where the possibility of eye irritation exists, the employer shall provide at no cost to the employee and ensure that the employee uses appropriate work clothing and equipment such as, but not limited to: \* \* \*

(3) \* \* \*

(iii) Laundering of contaminated clothing shall be done so as to prevent the release of airborne fibers of asbestos, tremolite, anthophyllite, and actinolite, or a combination of these minerals in excess of the permissible exposure limits prescribed in paragraph (c) of this section.

(iv) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (h)(3)(iii) of this section to effectively prevent the release of airborne fibers of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the permissible exposure limits.

(i) \* \* \*

(1) \* \* \*

(i) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals is above the TWA and/or excursion limit.

(2) \* \* \*

(i) The employer shall ensure that employees who work in areas where their airborne exposure is above the

TWA and/or excursion limit shower at the end of the work shift.

(3) \* \* \*

(i) The employer shall provide lunchroom facilities for employees who work in areas where their airborne exposure is above the TWA and/or excursion limit.

(iii) The employer shall ensure that employees who work in areas where their airborne exposure is above the TWA and/or excursion limit wash their hands and faces prior to eating, drinking or smoking.

(j) \* \* \*

(4) \* \* \*

(i) Asbestos, tremolite, anthophyllite, or actinolite fibers have been modified by a bonding agent, coating, binder, or other material provided that the manufacturer can demonstrate that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of fibers of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the action level and/or excursion limit will be released or

(5) \* \* \*

(i) The employer shall institute a training program for all employees who are exposed to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals at or above the action level and/or excursion limit and ensure their participation in the program.

(l) \* \* \*

(1) \* \* \*

(i) The employer shall institute a medical surveillance program for all employees who are or will be exposed to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals at or above the action level and/or excursion limit.

(4) \* \* \*

(i) The employer shall provide, or make available, a termination of employment medical examination for any employee who has been exposed to airborne concentrations of fibers of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals at or above the action level and/or excursion limit.

(o) \* \* \*

(1) \* \* \* The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective October 14, 1988.

(3) *Start-up dates for excursion limit.* Compliance with the excursion limit requirements in this section shall be as follows:

(i) Paragraphs (c), (d), (e), (g), (h), (j), (k), (l), (m) of this section, shall be complied with by December 13, 1988.

(ii) Paragraph (f) of this section, shall be complied with by March 13, 1989.

(iii) Paragraph (i) of this section, shall be complied with by September 14, 1989.

Part 1926 of Title 29 of the Code of Federal Regulations is amended as set forth below.

#### PART 1926—[AMENDED]

1. The authority citation for Subpart D of 29 CFR Part 1926 continues to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107 Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754) 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR Part 1911.

2. In § 1926.58 paragraphs (c), (e)(1), (e)(2), (f)(1)(ii), (f)(1)(iii), (f)(2)(ii), (f)(2)(iii), (f)(4), (g)(1)(i) introductory text, (g)(1)(ii), (g)(3), (h)(1)(iii), (i)(1), (i)(2), (j)(1)(iii), the first sentence of (k)(1)(i), (k)(2)(vi)(A), (k)(3)(i), (m)(1)(i), (n)(1)(i), the last sentence of (o)(1) and (o)(2) are revised to read as follows:

#### § 1926.58 Asbestos, tremolite, anthophyllite, and actinolite.

(c) *Permissible exposure limits (PELS)*—(1) *Time-weighted average limit (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes.



(e) \* \* \*

(1) *General.* The employer shall establish a regulated area in work areas where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals exceed or can reasonably be expected to exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the TWA and/or excursion limit.

(f) \* \* \*

(1) \* \* \*

(ii) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 30-minute short-term exposures of each employee.

(iii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for employees in each work area. Representative 30-minute short-term employee exposures shall be determined on the basis of one or more samples representing 30-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for employees in each work area.

(2) \* \* \*

(ii) The employer may demonstrate that employee exposures are below that action level and/or excursion limit by means of objective data demonstrating that the product or material containing asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals cannot release airborne fibers in concentrations exceeding the action level and/or excursion limit under those work conditions having the greatest potential for releasing asbestos, tremolite, anthophyllite, or actinolite.

(iii) Where the employer has monitored each asbestos, tremolite, anthophyllite, or actinolite job for the TWA, and where he has monitored after March 14, 1988, for the excursion limit, and the data were obtained during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy

the requirements of paragraph (f)(2)(i) of this section.

\* \* \* \* \*

(4) *Termination of monitoring.* If the periodic monitoring required by paragraph (f)(3) of this section reveals that employee exposures, as indicated by statistically reliable measurement, are below the action level and/or excursion limit the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) The employer shall use one or any combination of the following control methods to achieve compliance with the TWA and/or excursion limit prescribed by paragraph (c) of this section: \* \* \*

(ii) Wherever the feasible engineering and work practice controls described above are not sufficient to reduce employee exposure to or below the TWA and/or excursion limit prescribed in paragraph (c), of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

\* \* \* \* \*

(3) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the TWA and/or excursion limit.

(h) \* \* \*

(1) \* \* \*

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA and/or excursion limit; and

\* \* \* \* \*

(i) \* \* \*

(1) *General.* The employer shall provide and require the use of protective clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals that exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) *Laundering.*

(i) The employer shall ensure that laundering of contaminated clothing is done as to prevent the release of airborne asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the TWA and/or excursion limit

prescribed in paragraph (c) of this section.

(ii) Any employer who gives contaminated clothing to another person for laundering shall inform such persons of the requirement in paragraph (i)(2)(i) of this section to effectively prevent the release of airborne asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(iii) Whenever food or beverages are consumed at the worksite and employees are exposed to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the TWA and/or excursion limit, the employer shall provide lunch areas in which the airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals are below the action level and/or excursion limit.

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(i) Warning signs that demarcate the regulated area shall be provided and displayed at each location where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals may be in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section. \* \* \*

(2) \* \* \*

(vi) \* \* \*

(A) Asbestos, tremolite, anthophyllite, or actinolite fibers have been modified by a bonding agent, coating, binder, or other material, provided that the manufacturer can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these mineral fibers in excess of the action level and/or excursion limit will be released, or

\* \* \* \* \*

(3) \* \* \*

(i) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of the action level and/or excursion limit and shall ensure their participation in the program.

\* \* \* \* \*



(m) \* \* \*

(1) \* \* \*

(i) The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals at or above the action level and/or excursion limit for 30 or more days per year, or who are required by this section to wear negative pressure respirators.

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(i) Where the employer has relied on objective data that demonstrates that products made from or containing asbestos, tremolite, anthophyllite, or actinolite are not capable of releasing

fibers or asbestos, tremolite, anthophyllite, or actinolite or a combination of these minerals, in concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

\* \* \* \* \*

(o) \* \* \*

(1) \* \* \* The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective October 14, 1988.

(2) Start-up dates. The requirements of paragraphs (c) through (n) of this section, including the engineering controls specified in paragraph (g)(1) of this section, shall be complied with by January 16, 1987. Compliance with the excursion limit requirements in this section shall be as follows:

(i) Paragraphs (c), (d), (e), (f), (h), (i), (k), (l), (m), (n) of this section, shall be complied with by December 13, 1988.

(ii) Paragraph (g) of this section, shall be complied with by March 13, 1989.

(iii) Paragraph (j) of this section shall be complied with by September 14, 1989.

\* \* \* \* \*

[FR Doc. 88-20556 Filed 9-13-88; 8:45 am]

BILLING CODE 4510-26-M



The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The *Journal of the American Medical Association* is a weekly publication which contains a wide variety of material of interest to the medical profession and the public. It includes original articles, reviews, and reports on the latest developments in medicine. The *Journal* is also a valuable source of information on the activities of the American Medical Association and on the work of other medical organizations. The *Journal* is published in English and is available to members of the Association at a special rate. It is also available to non-members at a regular rate. The *Journal* is a valuable addition to the library of every medical practitioner.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was founded in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are physicians, surgeons, dentists, and other medical practitioners. The Association's principal activities are the publication of the *Journal of the American Medical Association*, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.



# Register Federal

---

Wednesday  
September 14, 1988

---

## Part IV

### Department of the Interior

---

#### Minerals Management Service

---

Proposed 1991 Lease Sale in the  
Beaufort Sea; Lease Sale 124; Call for  
Information and Nominations and Intent  
To Prepare an Environmental Impact  
Statement; Notice



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
MINERALS MANAGEMENT SERVICE  
Proposed 1991 Lease Sale in the  
Beaufort Sea

Lease Sale 124  
Call for Information and Nominations  
and

Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for Outer Continental Shelf (OCS) Lease Sale 124. This sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for February 1991. Information and nominations on oil and gas leasing, exploration, and development and production within the Beaufort Sea are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The area of Call is located offshore the State of Alaska in the Beaufort Sea and the Arctic Ocean. The area available for nominations and comments consists of approximately 9,500 whole and partial blocks (about 52 million acres) as outlined on the map which appears at the end of this Call. The map includes an outline of the Minerals Management Service's (MMS's) interpretation of the area of hydrocarbon potential. Respondents may nominate and are asked to comment on any acreage within the entire Call area. A larger scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for \$2.00 each.

The highlighted area shown on the map at the end of this Call and on the Call map was requested to be deferred by the State of Alaska during preparation of the 5-Year OCS Oil and Gas Leasing Program for Mid-1987 Through Mid-1992. The deferral was not adopted in the 5-year program; however, the area has been highlighted for special presale consideration and analysis as a potential deferral alternative in the Environmental Impact Statement (EIS) scoping process. Keeping this area under consideration for leasing will permit MMS to

further study it in the process of analysis and consultation. The acreage finally offered for sale will be determined only after extensive consultation with Federal Agencies, State and local governments, and the potentially affected public, and after careful review of environmental analyses conducted in those areas which may lead to discovery of new oil and gas reserves. This is consistent with the commitment made by DOI in the July 1987 5-Year OCS Oil and Gas Leasing Program.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in OCS Lease Sale 124. Nominations must be depicted on the larger scale Call map by outlining the area(s) of interest along block lines. Respondents may also submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents are also asked to rank areas nominated according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority, because blanket priorities on large areas are not useful in the analysis of industry interest.

The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments also are sought on potential conflicts that may result from the proposed sale and future OCS oil and gas activities with approved local coastal management plans (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of either broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Beaufort Sea Lease Sale 124," or "Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 124," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area. Copies of the Call map showing indications of interest and any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior,



Tentative milestones that will precede this sale, proposed for February 1991, are:

Milestones	Dates
Comments Due on the Call	October 1988
Scoping Comments Due	October 1988
Area Identification	December 1988
Draft EIS Published	January 1990
Hearings on Draft EIS Held	February 1990
Final EIS Published	August 1990
Availability of Proposed Notice of Sale Published	September 1990
Governor's Comments Due on Proposed Notice	November 1990
Final Notice of Sale Published	January 1991
Sale	February 1991

#### NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

##### Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 124 in the Beaufort Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

##### Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to

Minerals Management Service, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

#### Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to focus the analysis in the remainder of the sale process on areas of hydrocarbon potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the EIS and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS, including a description of the scoping process, is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to evaluate potential conflicts between the Coastal Management Program and offshore oil and gas activities.

#### Existing Information

An extensive environmental as well as socioeconomic studies program has been underway in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Description of Area or by telephone at (907) 261-4620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, or by calling (703) 285-2283.

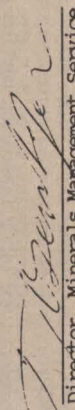
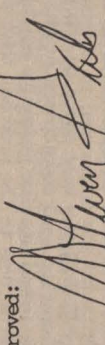
#### Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act, as amended, and with established departmental procedures.



the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Beaufort Sea Lease Sale 124." Comments are due no later than 45 days from publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Approved:

  
Acting Director, Minerals Management Service  
Thomas Gernhofer  
Assistant Secretary - Land and Minerals Management  
Steven Griles

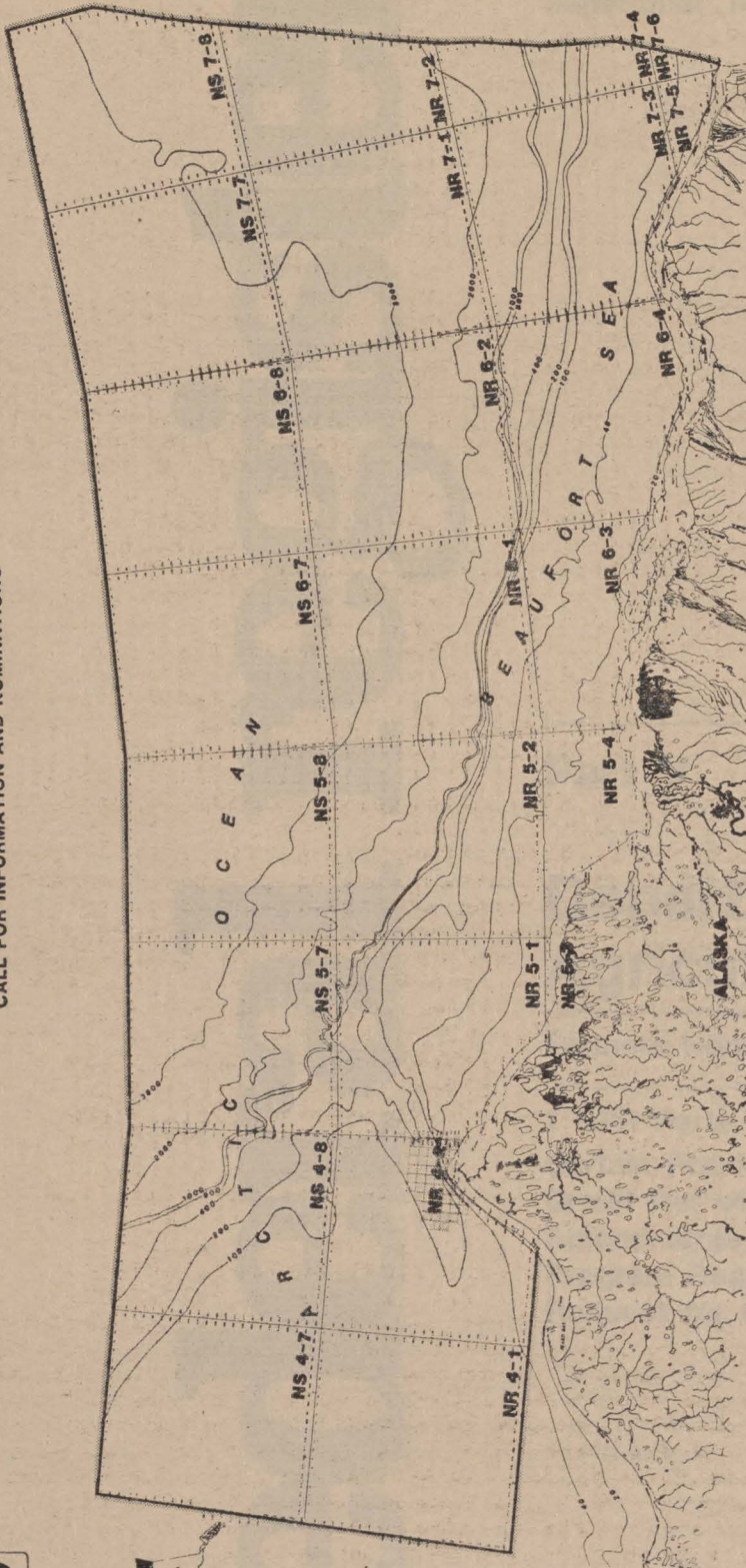
SEP 7 1988

Date



**BEAUFORT SEA**

SALE 124 (FEBRUARY 1991)  
CALL FOR INFORMATION AND NOMINATIONS



□ Area of Call

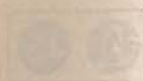
Highlighted Area

July 1988  
ALASKA OCS REGION



# AEG TROFUAAB

(1981) Trofuaab og Aeg  
 (1981) Trofuaab og Aeg





# Fast Facts

---

**Wednesday**  
**September 14, 1988**

---

## **Part V**

### **Department of Agriculture**

---

#### **Farmers Home Administration**

---

**7 CFR Parts 1809, et al.**

**Certain Provisions of the Agricultural  
Credit Act of 1987 and Additional  
Amendments of Portions of Farmer  
Program Regulations; Interim Rule with  
Request for Comments**



## DEPARTMENT OF AGRICULTURE

## Farmers Home Administration

7 CFR Parts 1809, 1902, 1910, 1924, 1941, 1943, 1944, 1945, 1951, 1955, 1962, 1965

**Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Farmers Home Administration (FmHA) published a proposed rule on May 23, 1988 in the *Federal Register* [53 FR 18392-18523] for comments. After consideration of the comments FmHA amends its regulations to conform to the following provisions of the Agricultural Credit Act of 1987 (Pub. L. 100-233): Section 503—Participation of Federal Agencies; Section 512—Waiver of Mediation Rights by FmHA Borrowers; Section 602—Definitions; Section 603—Security for FmHA Real Estate Loans; Section 604—Additional Collateral; Section 605—Notice of Loan Service Programs; Section 606—Planting and Production History Guidelines; Section 610—Disposition and Leasing of Farmland; Section 611—Income Release; Section 612—Conservation Easements; Section 614—Homestead Protection; Section 615—Debt Restructuring and Loan Servicing; Section 616—Transfer of Inventory Lands; Section 617—Target Participation Rates; Section 618—Expedited Clearing of Title to Inventory Property; Section 620—Lease of Certain Acquired Property; and Section 623—Farm Ownership Outreach Program to Socially Disadvantaged Individuals. This interim final also includes the following amendments: (1) Provide for Farm Ownership loans and leasehold interests in Hawaii; (2) remove obsolete and unfunded recreation loan program regulations; (3) add more guidance on what is a nonfarm enterprise; (4) require financial information from all members of an entity and delete the reference to principal members; (5) protect historic sites and correct health or safety problems; (6) clarify the use of the word character; (7) require that balloon payments be adequately secured by hard security other than just a crop lien; (8) remove the regulations for the restrictions on using operating loan funds for the production of surplus agricultural commodities; (9) define a feasible Farm and Home Plan and provide guidance for determining family

living expenses; (10) require each State to issue annually unit prices for Farm commodities; (11) consider a husband and wife as a joint operation when they both sign the application; and, (12) make other necessary clarifications and editorial changes. This action is being taken to: implement certain provisions of the Agricultural Credit Act of 1987, strengthen, clarify and correct noted weaknesses in existing regulations; and remove regulations for obsolete and unfunded loan programs. The intended effect is to: (1) Facilitate keeping borrowers on the Farm or ranch to the maximum extent possible; (2) respond to rural Farm problems throughout the Nation; (3) to minimize losses under farmer program loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded Farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; and, (6) provide more guidance to the FmHA field staff.

**DATES:** Interim rule effective October 14, 1988. Comments must be submitted on or before November 14, 1988.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. The Interim Regulatory Impact Analysis Statement (IRIA) and all written comments will be available for public inspection during regular working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Program, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447-4671.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of \$100 million or more.

**Memorandum of Law**

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as interim final rules to implement titles 5 and 6 of the Agricultural Credit Act of 1987, Pub. L. 100-233, 101 Stat. 1662 et seq. I find that these regulations comply with that statute and that FmHA has the authority to propose such regulations pursuant to that Act and to section 399 of the

Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

**Christopher Hicks,**  
*General Counsel.*

**Summary of IRIA**

The USDA has developed a Preliminary Regulatory Impact Analysis (PRIA) due to the effect the Agricultural Credit Act of 1987 will have on the economy. There are a number of requirements in the Act, however the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document. The PRIA for this document was summarized in the proposed rule published on May 23, 1988 [53 FR 18392].

The analysis showed that of about 118,000 borrowers delinquent in early 1988, about 37,000 borrowers were considered able to resolve delinquency through normal servicing actions, including subordination, rescheduling and deferral.

Of the remaining 81,000 borrowers eligible for consideration of restructuring with write-down of debt, about 16,000 were estimated to be able to show repayment on remaining debt and qualify for the write-down. An estimated 54,000 were estimated to be unable to show repayment ability and would be rejected for write-down. The remaining 11,000 delinquent borrowers were estimated ineligible for write-downs since their debt was less than the recovery value from liquidation.

The study estimated losses for FmHA to total \$2.7 billion for borrowers able to cashflow and qualify for the write-down and \$6.7 billion for borrowers unable to show repayment ability and rejected for restructuring with write-down. These losses could be reduced by an estimated \$1 billion through recapture provisions.

FmHA has already incurred significant loan losses due to deterioration in collateral and lien position that have already been incurred. Losses due to liquidation costs will be included in the write-down for borrowers who qualify for restructuring or add to loan losses on foreclosures. The study concluded that to a large extent the estimated losses associated with debt restructuring are unavoidable.

These estimates are subject to a wide range of variables affecting the number of delinquent borrowers who qualify for write-down and the extent of the write-down. For example, liquidation costs included in the write-down will vary with the average time property is held in inventory. For states with slow-moving



inventory the estimated liquidation costs, and the amount of write-down, will be greater than states with short turn around for inventory property. The extent of the drought will also impact the number of delinquent borrowers, future prices, and repayment prospects.

Despite these uncertainties, the estimates contained in the Preliminary Impact Analysis are considered to be substantially indicative of the number of borrowers qualifying for the write-down and associated costs of debt restructuring under the preliminary regulations are revised for interim final publication. Changes in the interim final regulations are likely to affect servicing and property management procedures more than the extent of debt adjustment under the restructuring provisions. For example, the interim final regulations have been revised to facilitate assistance to borrowers rejected for restructuring. Greater use of lease-back and buy-back provisions are expected through simultaneous credit sales of both real estate and chattel. These and other impacts are considered in an addendum to the revised impact analysis.

Since these provisions are required by the Act, other alternatives were not considered.

#### Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
- 10.416—Soil and Water Loans

#### Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It

is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Pub. L. 91-190), an Environmental Impact Statement is not required.

#### Background

The Agricultural Credit Act of 1987 (Pub. L. 100-233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our Farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances. They are as follows:

##### 1. Section 607—County Committees

Allows one member of the County Committee to be an FmHA Farmer Program borrower and removes the requirement that a member must derive the principal part of income from farming.

This was implemented March 24, 1988.

##### 2. Section 608—Administrative Appeals

Requires FmHA to set up a separate independent nationwide appeals system for all FmHA borrowers. This was implemented July 12, 1988.

##### 3. A Portion of Section 611—Income Release

Provides for the release of up to \$18,000 of normal income security for family living and Farm operating expenses to borrowers that have been accelerated but not foreclosed.

The FmHA field offices were notified on February 2, 1988, to implement this provision immediately.

##### 4. Section 613—Interest Rate Reduction Program; Demonstration Project for Purchase of System Land

Provides for an FmHA guarantee of up to 95 percent of the loan if there is an interest rate reduction for the loan for Farm Credit Administration (FCA) inventory property when the Farm Credit Administration District has received financial assistance from the Farm Credit System Assistance Board.

FmHA and FCA signed a Memorandum of Understanding for this on March 3, 1988.

##### 5. Section 619—Payment of Losses on Guaranteed Loans

Provides for FmHA to pay a lender estimated losses either through debt write-down or reorganization through bankruptcy for FmHA guaranteed loans.

##### 6. Section 711—Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration

Provides the pooling of notes for issuing pooling certificates for sale on the secondary market.

##### Section 803—Sale of Rural Development Notes

Allows the borrower who signed a note the opportunity to purchase the note before the note is offered for sale. This is for community programs. It was implemented on March 14, 1988.

##### 7. Title V—State Mediation Programs

##### Subtitle A—Matching Grants for State Mediation Programs

##### Section 501—Qualifications.

Establishes the procedures and requirements for FmHA to certify a State for a State mediation program.

Section 502—Matching Grants to States. Establishes the procedures for receiving grants from FmHA for State mediation programs.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA Farm borrowers. The Act requires their implementation. It will allow many Farm borrowers to continue to Farm and will, at the same time, assist in minimizing losses to the Government.

Since most of these sections of the Act are interrelated, they are combined into one separate issuance of regulations. Some of the sections require only minor changes in the regulations while others are major changes. The debt write-down provisions involve major additions to the regulations.

##### 8. These Interim Rules

Proposed rules were published in the Federal Register [53 FR 18392] on May 23, 1988, with a 30 day comment period. In view of the short statutory requirement for implementing these sections of Pub. L. 100-233, only a 30 day comment period was allowed. We believe that the short implementation period required by the Act shows that Congress intended for the claimants to benefit from them quickly after considering public comments. Any further delay in implementing these regulations would be thwarting Congressional intent. Therefore, we are publishing them as an interim rule with a further comment period.

##### Discussion of the Revisions and the Comments Received

In response to the proposed rule, 247 respondents commented in writing by



the close of business on June 24, 1988. The deadline for receiving written comments was June 22, 1988. Many of the respondents' letters contained comments on a number of the sections of the proposed rule. Comments were received from individuals, FmHA employees, interest groups, United States Congressmen, and State government officials. Many of the comments were copies of very similar letters. A number of the respondents indicated that they endorsed or concurred with the 116 pages of comments with attachments from the Farmers Legal Action Group, St. Paul, Minnesota.

Several of the respondents requested that some of the provisions of the regulations be published again as a proposed rule with a comment period. However, since most of the sections of the Act are interrelated, it would be very difficult and time-consuming to separate the regulations to publish part of them as a final rule. Also, many areas of the country are suffering from a severe drought. Many farmers are in immediate need of the benefits of this Act. Several Congressmen have recommended that FmHA publish these regulations as an interim rule with a comment period to expedite the implementation of the Act.

It is our opinion that, due to the drought, many farmers are in urgent need immediately of the benefits of this Act and that after consideration of all the constructive comments received for the proposed rule, the revisions to the proposed rule provide workable regulations that will be of immediate assistance to many farmers and will help in minimizing losses to the Government. Major changes in regulations such as these almost always have to be fine-tuned by additional revisions after they are implemented. Therefore, the proposed rule with revisions is issued as an interim rule with a 60 day comment period.

Comments are discussed as "A. Summary of General Comments," and "B. Specific Comments and Regulation Revisions."

#### A. Summary of General Comments

A very great number of individuals did not specifically address any particular section of the proposed rule, but made general statements such as:

1. The regulations are unfair to those who have to pay their debts in full at higher interest rates.
2. The regulations are discriminatory.
3. The regulations are a terrible burden and a waste of taxpayer's money.

4. Respondent is going to suspend payments to FmHA until the respondent receives a satisfactory explanation.

5. Keeping these farmers in business adds to the surplus on one hand, while on the other hand, the Government buys up the surplus and supports prices.

6. Credit is too easy. The Government should foreclose.

7. There is no incentive to do a good job.

8. Many FmHA borrowers are poor managers; they spend money they do not have.

9. This is another shove to make a proud, hardworking person into a freeloader.

10. Such regulations dampen and corrupt successful attitudes.

11. This regulation will not help the hardworking farmers who pay their bills.

12. Some people succeed and some fail. Let the good survive and the bad get out.

13. Some Farm the land, some Farm the Government.

14. I am mad as hell and tired, you should write down all farmers debts.

15. I am happy to see that small farmers can have their debts written down to where they can handle it and stay in business.

16. This program will assure there is food on the shelves in the grocery stores. We would have asked the Grange to support this program.

17. Selling the Farm back to the borrower will not solve the problem.

#### B. Specific Comments and Regulation Revisions

The comments and regulations revisions will be addressed in the order that the regulations appear in the CFR.

### PART 1809—APPRAISALS

#### Subpart A—Appraisal of Farms and Leasehold Interest

Section 1809.1 is amended to correct a reference and to remove Recreation (RL) loans from the paragraph as this program is removed from FmHA regulations. No comments were received on this amendment. The proposed rule is adopted as proposed.

*Section 1809.4—The three-way approach to market value.* Respondents commented on other regulations that the price of suitable farmland should reflect the annual production value. FmHA uses the capitalization value to determine this. Therefore, we have revised this section to clarify the procedure for this.

### PART 1902—SUPERVISED BANK ACCOUNTS

#### Subpart A—Loan and Grant Disbursements

The agency is revising Subpart A of Part 1902 of the regulations to delete the requirement that the original cancelled check must be returned by the bank when countersigned checks are used and keep the regulations in line with evolving technology in the commercial banking industry.

*Section 1902.1—General.* The amendments to this section provided for the deletion of Exhibits C and D, changing the word "bank" to "financial institutions" and allowing the placement of payments in a supervised bank account when a borrower is in liquidation and State law requires a reversal of the acceleration if payment is accepted. No unfavorable comments were received regarding the deletion of Exhibits C and D and the word change from "bank" to "financial institutions." Thus, the Agency adopts the proposed amendment for these two items. Several comments were received on the placement of payments received in a supervised bank account when an account is in liquidation. The respondents concerns were that interest would continue to accrue upon the account as the payment would not be applied directly to a loan account. The Agency has amended § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter, deleting this requirement and has deleted the reference to § 1955.15(d)(3) of Subpart A of Part 1955 of this chapter.

*Section 1902.2—Policies concerning disbursement of funds.* The amendments to this section provided for the deletion of Exhibits C and D, the submitting of Forms FmHA 440-57 or 1944-57 to the State Office rather than the Finance Office, change "bank" to "financial institution," and allowing financial institutions using a truncation process to provide FmHA with a microfilm copy or other reasonable facsimile of the original cancelled check when requested by FmHA at no charge either to FmHA or to the borrower, and the original check will not have to be provided to FmHA and/or the borrower with the bank statement. One FmHA respondent commented on the submitting of Forms FmHA 440-57 or 1944-57 to the State Office instead of the Finance Office and the subsequent ordering of checks by the County or District Offices. All field offices now have the capability of ordering subsequent checks by the Automated Data Processing System (ADPS) and the Agency has revised this



section to clarify when the County or District Offices will submit Form FmHA 440-57 or 1944-57 and how to order subsequent checks. The Agency chooses to adopt the proposed rule as amended.

One respondent commented that the regulation did not adequately explain when it was "necessary" to place funds in a supervised bank account. The Agency adopts a change to paragraph (a)(6) of § 1902.2, in which the County Supervisor and the borrower will agree that special supervision is needed in the management of the borrower's financial affairs. This supervisory technique will be temporary in nature and cannot exceed one year unless the District Director agrees to an extension of time. The Agency adopts the proposed amendment.

*Section 1902.3—Procedures to follow in fund disbursement.* One respondent commented that advances are now requested by the ADPS system. This change was made.

Exhibit B was revised to change "bank" to "financial institutions," and to modernize certain legal expressions. Since no unfavorable comments were received, the Agency adopts the proposed amendment.

Exhibits C and D were deleted and since no unfavorable comments were received, the Agency has deleted these two Exhibits.

The rest of the proposed rule is adopted as proposed. No other comments were received.

## PART 1910—GENERAL

### Subpart A—Receiving and Processing Applications

This subpart provides the procedures for receiving and processing FmHA applications for services. This subpart was revised in part to incorporate section 623, "Farm Ownership Outreach Program to Socially Disadvantaged Individuals" of the Agricultural Credit Act of 1987. This section provides for a farm ownership outreach program for persons who are members of any group with respect to which an individual may be identified as a socially disadvantaged individual to encourage the acquisition of inventory farmland of FmHA. Several comments were received regarding the method of outreach, the targeting of funds and the identification of the socially disadvantaged. These comments are addressed in the appropriate sections of the regulations.

*Section 1910.1—General.* The Agency proposed to delete reference to recreation (RL) loans and to refer to insured section 502 and 504 Rural Housing (RH) for clarification. No

negative responses were received. The Agency adopts the proposed amendments.

Several respondents commented that the phrase "other written statements" concerning information the County Supervisor would provide to an applicant/borrower was too vague and that the Agency should clearly state the content of the information provided. The Agency adopts a change which deletes the wording "other written statements" and provides for the distribution of the appropriate FmHA program regulations.

One respondent was concerned that while historic preservation concerns are addressed in various ways by subsequent sections, in § 1910.1 there is no clear and simple methods which will assure historic preservation issues will ever be addressed in the granting of FmHA assistance. The Agency believes its present process as outlined in Subpart G of Part 1940 of this chapter covers the respondent's concerns. The Agency also plans to update the environmental regulations in the near future to conform with the Advisory Council on Historic Preservation recommendations. These changes will be addressed in a separate regulation.

*Section 1910.2—Equal Credit Opportunity Act (ECOA) and Regulation B.* One respondent commented that additional language should be included that would not deny any applicant assistance or services if the applicant, in good faith, exercised any right under State or Federal law. The Agency believes that it is not necessary to adopt this recommendation, as applicants are already protected if a State or Federal law takes precedence over FmHA's regulations.

*Section 1910.3—Receiving applications.* Several comments were received regarding the filing of a written application and that applicants will be encouraged to file a written application even though funds may not be currently available. It was reported this is a standard practice in some FmHA field offices to discourage the filing of written applications when funds are not currently available. It was suggested that a statement be placed on Form FmHA 410-1, "Application for FmHA Services," that stated "you should file a written application even if FmHA funds are not available." It was also suggested that FmHA either post notices or provide written notices that an application is required for debt restructuring. The Agency agrees with the comment and has amended this section to stress that all applicants will be encouraged to file a written application, that no oral or written statements will be made to applicants

that would discourage them from applying, and that completed applications must be considered in the date order received. The proposed amendment is adopted as changed.

One respondent was concerned that Form FmHA 410-1 was not included in the proposed rule. FmHA normal policy is not to publish forms in the Federal Register. Most FmHA forms are readily available in any FmHA office. The statute does not require the publication of forms in the Federal Register.

FmHA added a provision that provides for County Office employees to be responsible for receiving loan applications and giving a preliminary explanation of the services available. This will provide for a greater utilization of FmHA's workforce in meeting the needs of applicants. The proposed amendment is adopted.

One provision added to this section was to differentiate between joint applications for Single Family Housing loans and for Farmer Program loans, and that husbands and wives who jointly request a Farmer Program loan will be considered a joint operation. One respondent indicated the regulations were not clear as to those applicants who are married and request a farmer program loan if they are considered a joint operation and what the loan limits would be. The Agency agrees and has clarified the regulations to stress that if both parties want to file together, they will be considered a joint operation and both must meet the eligibility requirements. It will be the responsibility of the County Office employees to explain to the applicants that if they insist on filing together, they will be considered a joint operation. If each party has a separate and feasible operation, they can file as individuals and each receive the maximum loan limits. If they file as a joint operation, they are only entitled to one maximum loan limit. The Agency adopts these changes to the proposed rule.

Several parties responded regarding the new emphasis the Agency was placing on the requirements for a cosigner. Their concerns were that the Agency was requiring a cosigner in certain instances. They felt that the only time a cosigner was required was when the applicant had to rely upon the cosigner for repayment or that the security provided by the applicant was not adequate to secure the loan request. The Agency agrees and has adopted the change that for Farmer Program loans, a cosigner will be requested only when the applicant cannot meet the repayment or security requirements of the loan request.



**Section 1910.4—Processing applications.** Several parties responded regarding the information which an applicant must submit to the Agency to have a complete application on which to take action. They were concerned that a number of the items listed were the responsibility of the Agency to provide for a completed application, thus out of the control of the applicant. Other concerns were that an applicant should not have to provide income tax records when the applicant had a set of financial records to support the request; up to five-years production history should also include expense history; and an applicant who is applying to purchase a farm must have an option for the application to be complete. The Agency has amended this section and has adopted these changes.

Several respondents commented that there was no means to identify an applicant as a socially disadvantaged individual on the application. Form FmHA 410-1 has a section which indicates race that the applicant may complete if the applicant so desires. This section will allow those applicants who are members of socially disadvantaged groups and who wish to be considered under the socially disadvantaged program that they may do so. One respondent indicated that they needed a better definition of socially disadvantaged individuals in this section. The definition of socially disadvantaged has been clarified in § 1943.4 of Subpart A of Part 1943 of this chapter. The Agency believes the issue of identification is properly addressed in the application and no changes will be made to the application.

Several respondents commented that the notice of the programs for "socially disadvantaged individuals" would not be provided to an applicant until after a completed loan application was received. The Agency agrees with the comments and has revised its regulations to provide Exhibit B, "Letter to Notify Socially Disadvantaged Applicants/Borrowers About the Availability of Insured Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Inventory Farmland," to all socially disadvantaged individuals at the time they make initial contact with FmHA and/or when an application for FO assistance is received. The proposed amendment is adopted as changed.

One respondent commented that the Agency had not implemented the 1985 Food Security Act which provided that all adverse actions are appealable. The Agency has clarified its appeal procedure and has amended this section to refer to Subpart B of Part 1900 of this

chapter for guidance in providing an applicant with appeal rights referring to appealable decisions because Subpart B of Part 1900 controls this aspect of the notification process. The Agency adopts this change to the proposed rule.

One respondent commented that the amendment did not spell out what constitutes "a specific reason" for an unfavorable decision. The respondent went on to indicate that many times an unfavorable decision by a County Committee would be so vague the applicant would not be able to tell for what specific reason the application was rejected. Both §§ 1910.4(j) and 1910.6(b) have been amended to require that the decision maker will clearly state the specific reason(s) for the rejection in the letter to the applicant and the factual justification for this action must be set forth. The Agency adopts this change to the proposed rule.

Several comments were received regarding the time an application remains active and the Agency's determination as to when to withdraw an active application when the applicant has expressed a lack of interest in pursuing the application. This change allowed FmHA the ability to update its application files in a timely and orderly manner. It provided the means for FmHA to maintain files with current financial and operational information so that at a later date, if the applicant wants to proceed with the application, the burden of updating the application will be minimal. There was some confusion on the part of some of the respondents, as they felt the applications received for FO loans would only remain active for 12 months, while the applications for other Farmer Program loans would remain active for 25 months. All applications will remain active for 12 months from the date a completed application is received. If the applicant has indicated that the applicant is no longer interested in pursuing the application and the application has been withdrawn, disapproved or closed, the applications will then be handled in accordance with § 2033.7 of FmHA Instruction 2033-A (available in any FmHA office), which provides for the retaining of these files for 25 months before they can be disposed. For additional clarification, FmHA has amended this section to allow the County Supervisor to notify those applicants whose requests were not funded during the eleventh month following receipt of a completed application, that in order for the application to remain active, the applicant must provide a written notice requesting that the application remain

active. The Agency adopts these changes to the proposed rule.

**Section 1910.5—Evaluating applications.** Several respondents voiced concern that delinquencies that have been resolved through debt restructuring or other forms of primary loan servicing should not be used as an indication of lack of creditworthiness, in addition to foreclosures, judgments, delinquent payments, etc., not being considered as an indicator of unacceptable creditworthiness under certain circumstances, the Agency has adopted an amendment that will include those debts resolved in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter in the list of items which will not indicate an unacceptable credit history. The Agency has also clarified that when non-payment of a debt was due to circumstances beyond the applicant/borrower's control, this will not constitute an unacceptable credit history. The proposed amendment is adopted as changed.

There were also a few respondents who felt that applicants who had their debts settled without payment or had declared bankruptcy were not good credit risks and those items should be deleted from the amendment. The Agency believes that to change the regulation regarding the debt settlement provision would unfairly penalize those applicants who attempted to resolve their FmHA debts within the normal framework and FmHA has agreed to this approach. As far as bankruptcies are concerned, to hold a bankruptcy against an applicant would be contrary to the basic intent of the Bankruptcy Code to provide a debtor with a "fresh start" or "clean slate." Therefore, the Agency does not adopt this suggestion.

**Section 1910.6—Notification of applicant.** There was one respondent whose major concern with this section was that many times the County Committee will deny eligibility and the County Supervisor would also advise the applicant of the reasons why the loan would have been denied even if the County Committee had determined the application eligible. This practice has an adverse impact on the applicant as the applicant must address all of the feasible reasons in addition to the County Committee's reasons at the appeal hearing. The Agency agrees and has amended this section to include separate eligibility and feasibility sections. The Agency has also amended this section to require that the specific reasons for the adverse action must have a factual basis. Another respondent was concerned about the notification to applicants when funds



become available. The suggestion was to provide the notification by certified mail, return receipt requested. This respondent was also concerned about the fact that, when a County Supervisor requested updated information, if more than 90 days had passed since Form FmHA 1940-1, "Request for Obligation of Funds," was signed, there was no time limit for how long the County Supervisor has to review the information. There was also the concern that additional clarification was needed as to what the phrase "significant changes" meant and how much additional information was needed for the County Supervisor to make the decision. The Agency agrees and the proposed amendment is adopted as changed.

**Section 1910.7—Counseling.** One respondent commented that many times County Supervisors do not tell farmers about alternative FmHA programs that might be of benefit to them. The Agency has amended this section to require that the County Supervisor will discuss all FmHA programs that might assist the applicant in achieving the applicant's goals. The proposed amendment is adopted as changed.

**Section 1910.8—Reaching an understanding.** One respondent felt that the Outreach Program and the Targeted Farm Ownership Program should be listed as one of the items to be discussed with the applicant, that a check list should be developed to indicate that each item was discussed, and FmHA should provide written explanatory material to each applicant who may be members of a socially disadvantaged group during this interview process. Sections 1910.4 of this subpart and 1943.13 of Subpart A of Part 1943 of this chapter have been amended to provide information to members of socially disadvantaged groups at initial contacts and also at the time an application is filed. The Agency believes this issue is properly addressed in the appropriate sections and those amendments will be adopted in the respective sections.

**Exhibit A to Subpart A of Part 1910.** One respondent commented that Exhibit A, "Letter for Information Needed for a Complete Farmer Program Application," needed clarification and rewriting to make it readable for borrowers. The Agency agrees. Examples which the Agency felt needed to be clarified included types of financial information requested, what is meant by up to five years of production history, and a list of all local lenders from whom the applicant is required to obtain written evidence of the applicant's inability to

obtain other credit. The Exhibit was rewritten for clarification. The comment regarding "up to five years" should be self-explanatory in that if the applicant has 5 years or more of production history, it would mean the past 5 years, and if the applicant is fairly new in farming, production history would only be required for those years for which it was available. The Agency is concerned that requiring the County Supervisor to provide a list of all local lenders whom the applicant is required to contact regarding other credit could result in the appearance of a conflict of interest if the County Supervisor happens to overlook a couple of lenders in preparing the list and so is not adopting this suggestion. The proposed amendment is adopted as changed.

**Exhibit B to Subpart A of Part 1910.** One respondent commented that the title to Exhibit B, "Letter to Notify Applicants About Limited Resource Loans and Socially Disadvantaged Individuals in Obtaining Direct FO Loans and the Acquisition/Leasing of Inventory Farmland," did not make sense and that the readability was beyond the limits of some of the individuals who would receive the Exhibit. The Agency agrees with the comment and has amended the Exhibit so that it addresses only socially disadvantaged individuals and has amended the proposed rule so that it refers back to the original regulation regarding notification to applicants/borrower about the limited resources program.

Clarifying changes were made to § 1910.3(i) to delete out-of-date references to loan programs which are not covered by this regulation.

#### Subpart B—Credit Reports (Individuals)

**Section 1910.52—General.** This revision was added to the interim rule to update a reference.

#### PART 1924—CONSTRUCTION AND REPAIR

**Subpart A—Planning and Performing Construction and Other Developments.** This subpart provides guidance in the planning and performing of construction and other development when construction or repairs are needed. Section 1924.1 was amended to add Softwood Timber (ST) loans and remove Recreation (RL) loans. No negative comments were received. The Agency adopts the proposed amendment.

**Subpart B—Management Advice to Individual Borrowers and Applicants.** This subpart provides guidance to FmHA regarding the providing of management advice to farmer program loan individual applicants and

borrowers. This subpart was revised in part to incorporate Section 606 "Planting and Production History Guidelines" of the Agriculture Credit Act of 1987. This section provided for the use of State and county averages when an accurate projection cannot be made because the applicant's past production history has been affected by natural disasters declared under the Disaster Relief Act of 1974. A number of comments were received and the Agency has addressed this section in the appropriate subpart of this section. This section was also revised to incorporate provisions of Section 611 "Income Release," which requires FmHA to release income under certain circumstances. Several comments were received regarding the need for clarification regarding income releases. These comments are addressed in this subpart and also in the appropriate sections of the proposed regulations and the proposed rule has been amended where appropriate.

**Section 1924.51—General.** The amendment to this section provides for the deletion of Recreation (RL) loan program and the deletion of the Exhibit A "New Full-Time Family Farmer and Rancher Development Committee." No negative comments were received. The Agency adopts the proposed amendment.

**Section 1924.56—Credit Counseling.** One respondent commented that it appears that subsection (b)(2) of this section was misplaced because it directed a County Supervisor to advise applicants and borrowers of FmHA's credit elsewhere requirements. The respondent felt this was not proper as eligible applicants should have already proven that they could not get credit elsewhere. This section provides guidance to the County Supervisor of his/her responsibility to provide credit counseling to applicants and borrowers. Credit counseling is more than advising applicants and borrowers of FmHA's credit elsewhere requirement. It is a means of providing the applicant/borrower with information about other credit sources that are available and how these credit sources can be utilized, along with FmHA's funds, to best meet the objectives of both the applicant and/or borrower and FmHA. Many times the borrower is able to obtain credit from other sources with the assistance of FmHA's credit counseling which helps the borrower to increase his/her financial knowledge, thus resulting in an informed applicant/borrower who can take advantage of other credit that is available. The Agency has amended subsection (b)(2) of this section by deleting the term borrower as all



persons who are eligible applicants can be a borrower or a new applicant. The Agency adopts the proposed rule as amended.

**Section 1924.57—Planning.** One respondent requested that FmHA include a statement in this section that FmHA may not use the Coordinated Financial Statement (CFS) form without first obtaining the farmer's written permission. The Agency is prohibited by section 1325 of the Food Security Act of 1985 (Pub. L. 99-198) from using the CFS and so does not need this change to the proposed rule. However, we did add a statement prohibiting its use.

One respondent felt that the statement "These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation" was not flexible enough to allow any flexibility for those operators which might require a plan for a shorter or longer period of time. The Agency agrees and has revised the proposed rule to allow the plan to cover the production cycle.

One respondent suggested that if a livestock borrower is current with his/her payments and in good standing with FmHA that Form FmHA 431-2, "Farm and Home Plan," not be filled out as it would reduce the workload in the County Office. This section relates to the completion of an annual plan of operation and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," which we believe the respondent is referring to instead of Form FmHA 431-2. Form FmHA 1962-1 is required for all borrowers with FmHA loans secured by chattels. The completion of Form FmHA 1962-1 is essential, especially for livestock operators, as it is the means that allows FmHA and the borrower to reach an understanding as to the use and release of chattel security.

Several respondents were concerned that County Supervisors were not provided with proper guidance on how to develop "Key Management Practices" and that once these practices were developed that a list should be provided the borrower and those practices which the borrower has not incorporated into the operation will be incorporated in Schedule D of the borrower's Farm and Home Plan. The Agency agrees and has amended this section to provide guidance to the County Supervisor in developing "Key Management Practices." The guidance provides an example of whom the County Supervisor should consult in developing these practices. Those key practices upon which the borrower and the County Supervisor agree, will be documented in

Schedule D of the Farm and Home Plan. The proposed amendment is adopted as changed.

Several respondents commented that the wording regarding plans developed by agencies and organizations outside of FmHA was vague and the final rule should be more specific as to clearly detail the weight given and the effect the various plans might have on the operation. The Agency agrees and has clarified this section to specify those outside agencies from which an applicant can request assistance and that any outside plans developed, which are applicable to the applicant's operation, will be used. If the plan is not feasible then the County Supervisor will document the reasons why in the borrower's case file. The proposed rule is adopted as amended.

There were several respondents who took issue with the proposed definition of a feasible plan. Their major concerns were that not all farming operations have an equal degree of risk and it was not proper to impose an equal reserve for risk for all types of operations and that it was arbitrary and capricious to require that all borrowers live at an "average" standard of living. The Agency agrees and has amended this section to define a feasible plan as a plan based upon actual production and expense records which will pay all operating expenses, meet necessary payments on all debts and provide a living expense which is in accordance with the family's essential need. The proposed rule is adopted as amended.

Several respondents were concerned about the requirement in this section which stated "when an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, County average yields will be used for the disaster year(s)." Their concern was that for those borrowers who were not in a declared disaster area but had a disaster that would have qualified them if the area had been declared as a disaster area.

The Agency agrees and has revised the proposed amendment to allow those farmers who have had a qualifying loss and were not located in a designated/declared area to use county average yields for the disaster year(s). The proposed rule is adopted as amended.

There were several respondents who took exception to the establishment of unit prices by basing the prices exclusively on the past 12 month's prices. If a disaster has occurred during the 12-month period this period would not be a good prediction of future prices as it would reflect the increase in prices

due to a shortage of supply. The Agency has revised this section to allow the State Director to consult with State Directors adjoining the State and other knowledgeable agricultural representatives and lenders in establishing commodity prices. These borrowers who have proven accurate records to support a premium price or contracts with well established markets will be allowed to use these prices. The proposed rule is adopted as changed.

One respondent was concerned that while an appeal is pending and the borrower's request for releases were in excess of what would be average for the area that even if the borrower documented the reasons for the release, the regulations do not clarify if FmHA will allow the additional release or how FmHA makes the decision. To clarify this section FmHA has amended this section to provide for additional releases when the borrower has documented and justified the need for them. The documentation, by the borrower, will be the means where by FmHA will be able to make the decision as to the justification of the release. The Agency adopts the proposed amendment as changed.

**Section 1924.58—Recordkeeping.** Several comments were received regarding the keeping and maintaining of records, and the responsibilities of the County Supervisor in assisting the borrower in recordkeeping. It was also requested that the word adequate be defined. The Agency has amended the proposed amendment to require the borrower to maintain a recordkeeping system which will provide a monthly cash flow, a change in financial position, beginning and end of year balance sheets, and an income statement. It will be the responsibility of the County Supervisor to determine that the borrower's recordkeeping system meets the above conditions. It is also the County Supervisor's responsibility to assist those borrowers who are unable to maintain a recordkeeping system. The proposed amendment is adopted as changed.

**Section 1924.60—Analysis.** One respondent commented that this section on analysis should be clarified as to the conducting of an annual analysis for borrowers who have had their debts restructured. The Agency agrees and has amended this section to clarify for what purposes and when an analysis will be conducted, and how the information that the analysis develops will be utilized. The proposed amendment is adopted as changed.

**Section 1924.71—Delinquent borrower.** This section has been



amended to clarify that "Status Report of Farmer Programs Accounts, 540" will be sent monthly to each FmHA County Office. No negative comments were received regarding the servicing of these delinquent accounts as proposed in Subpart S of Part 1951 of this chapter. The Agency adopts the proposed amendment as changed.

**Exhibit A to Subpart B.** Several respondents commented regarding the need for clarification as to release of essential family and operation expenses and the need for a chart to assist the borrower in knowing what items would require prior approval regarding Form FmHA 1962-1 "Agreement for the Use of Proceeds/Release of Chattel Security." The Agency agrees and has amended Exhibit A to clarify the reasons for the form and how it is to be utilized by both the borrower and FmHA. A chart has also been developed which will provide guidance to both the borrower and FmHA as to those items which will need prior consent before the borrower can proceed with the action. The Agency adopts the proposed rule as amended.

There were other respondents who requested minor changes as to the further definition of records and clarification of phases which the Agency has adopted and has amended this section to reflect these changes. Otherwise, the proposed rule is adopted as proposed.

## PART 1941—OPERATING LOANS

### Subpart A—Operating Loan Policies, Procedures, and Authorizations

This subpart provides procedures for receiving and processing insured operating loans, and was revised to incorporate section 602 "definitions" of the Agricultural Credit Act of 1987. This section provided for a classification of the term borrower. No negative comments were received and the proposed rule was adopted. Section 603, "Security for FmHA Real Estate Loans," of the Agricultural Credit Act of 1987 permits a borrower to use the same real estate collateral to secure two or more loans made, insured or guaranteed under this subtitle. The outstanding amount of such loans may not exceed the total value of the collateral. No negative comments were received and the proposed rule was adopted with other minor additions, in the interim rule.

**Section 1941.2—Objectives.** One respondent commented that this section should be clarified regarding the making of youth loans. The concern was that the present regulation implies that loans to youth can be made to assist them to be family-sized farm operators. The Agency

agrees that CONACT section 311(b)(1) provides that loans may be made to youths who are rural residents to enable them to operate enterprises in connection with their participation in 4-H Clubs, Future Farmers of America and similar organizations. The Agency believes that the CONACT specifically states that the youth loan program is to assist rural youth in establishing income-producing projects under the guidance of a 4-H Club. The Agency agrees and adopts the proposed rule as changed.

**Section 1941.4—Definitions.** Several respondents commented on the feasibility definition. The Agency has incorporated clarification changes, along with other minor changes in language, and additions, in the interim rule.

One respondent stated the definition of "Limited Resource Applicant" refers to Exhibit B which has expired. The Agency agrees with this comment and has deleted the reference to Exhibit B and adopts the proposed rule as amended.

**Section 1941.6—Credit elsewhere.** Several respondents stated that the credit elsewhere decision should be a County Committee decision not a County Supervisor's decision, and that the proposed rule was not consistent with Subpart A of Part 1910 of this chapter. Subpart A of Part 1910 of this chapter requires that the County Supervisor verify and document that adequate credit is not available before a loan is approved.

While the County Committee is responsible for the determination of eligibility, it is the County Supervisor's responsibility to verify the credit needs and the availability of other credit to the applicant. The County Committee makes the decision regarding the borrower's ability to obtain other credit assistance. The Agency has amended this section to require the County Supervisor to document the availability of adequate credit along with other minor changes and additions in the interim rule.

One respondent commented that borrowers should not be asked to obtain higher cost guaranteed loans. FmHA borrowers are encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management procedures. The guaranteed interest rate reduction program allows the lenders to reduce the interest rate to borrowers in order to develop a feasible plan. The Agency has determined that borrowers are not eligible for an insured loan as long as the guaranteed loan is feasible.

**Section 1941.12 Eligibility requirements.** Several respondents

commented that the eligibility requirement for training or farming experience within one of the past five years is unreasonable. The Agency has amended the proposed rule to provide that educational or on-the-job training, within one of the past five years, may be considered adequate experience. The Agency adopts the proposed rule as amended.

Several respondents commented that if a person has a history of delinquency for reasons beyond his/her control but had made an honest effort to meet his/her obligations that this factor should be considered as a favorable character trait. The Agency agrees and has incorporated the change in the interim rule.

**Section 1941.16—Loan purposes.** One respondent commented that the OL limitations of \$7,500 that could be loaned in a fiscal year for real estate improvements or repairs was not realistic. The Agency agrees and has amended this section to increase the loan limit to \$15,000. The Agency adopts the proposed rule as amended.

**Section 1941.17—Loan limitations.** Several respondents commented that this section should be clarified by stating that the applicant's principal loan balance may not exceed the loan limit for the program. The Agency agrees and has amended this section to state that the total outstanding principal loan balance, including the new loan owed by the applicant, may not exceed the loan limit.

One respondent stated that the reference regarding the Memorandum of Understanding between FmHA and the U.S. Fish and Wildlife Service should be included in this section to insure that all parties involved would know of the assistance that the U.S. Fish and Wildlife Service could provide. The Agency agrees and has incorporated this comment in the interim final rule.

**Section 1941.18—Rates and terms.** Several respondents commented that the regulations should be changed to state that, "The interest rate for the loan will be the interest rate in effect at the time of the loan approval or loan closing, whichever is lower." The statutory language of the CONACT permits only the lower rate to be used where the applicant request that the lower rate be used. The Agency adopts the proposed rule, along with other minor changes in the interim final rule.

**Section 1941.19—Security.** This section provides that a borrower is not required to use separate and identifiable collateral to secure two or more loans made, insured or guaranteed, provided the outstanding amount of such loans



does not exceed the total value of the collateral used. Section 603, Security for FmHA Real Estate Loans of the 1987 Farm Bill, states that a borrower may use the same collateral to secure two or more loans made, insured or guaranteed. This subtitle deals only with real estate. One commentor stated that applying this requirement to chattel loan security would complicate loan servicing and liquidation if the borrower had both real estate and chattel loans secured by the same chattel security, and should be prohibited. The Agency agrees and incorporates the change along with minor changes in language and addition in the interim final rule.

One respondent commented that FmHA does not allow borrowers to obtain a subordination for amounts advanced for annual operating and living expenses for the crop year. The Agency has clarified this section to allow subordinations.

One respondent expressed concern that FmHA was making unsecured loans and that this practice should be prohibited. FmHA agrees and has amended this section to provide that the security pledged for loans must be adequate to assure repayment of the loan and other minor changes in language and additions, in the interim final rule.

**Section 1941.25—Appraisals.** Several respondents commented that FmHA should complete an appraisal for all loans regardless of the loan size and establish qualifications for FmHA appraisers. Currently appraisals are not required when a chattel debt is being refinanced for under \$5,000 and for real estate when the security needed is less than \$10,000. The Agency agrees and has amended this section to require an appraisal whenever an initial loan is made and has established qualifications for contract appraisers in the interim final rule.

**Section 1941.29—Relationship between FmHA loans, insured and guaranteed.** Several respondents commented that the relationship between FmHA loans, insured and guaranteed, should be clarified. The Agency agrees and has clarified this section by including an example which will explain or demonstrate the relationship between the two programs in the interim final rule.

**Section 1941.33—Loan approval or disapproval.** One respondent commented that the loan principal balance could not exceed the guaranteed OL limit of \$400,000. This section deals directly with insured operating loans only and the limitation of guaranteed OL is found in § 1941.29. The Agency adopts the proposed rule.

#### **Subpart B—Closing Loans Secured by Chattels**

This subpart provides the procedures for closing operating loans secured by chattels. It was revised in part to incorporate comments received on the proposed rule.

**Section 1941.54—Promissory note.** One respondent commented that FmHA should provide explicit guidance regarding when cosigners are required. The Agency agrees and has clarified this in the interim final rule.

**Section 1941.88—Insurance.** Several respondents commented that crop insurance should be a loan requirement for crop loans and one commentor stated that it was not necessary for the County Office to maintain a record on Form FmHA 1905-12, "Monthly Expirations," of the date on which a borrower's crop insurance premium is due. The Agency believes that the decision to purchase crop insurance is a key management decision that should be left up to the County Supervisor and the borrower and not an absolute requirement for loan assistance. The Agency has deleted the requirement that the County Office maintain the monthly expiration card for crop insurance premiums only. The Agency adopts the proposed rule as amended.

#### **PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION**

##### **Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations**

This subpart provides the procedures for receiving and processing of insured farm ownership loans. This subpart was revised in part to incorporate section 603, "Security for FmHA Real Estate Loans," which provides for the borrower to use the same real estate collateral to secure two or more loans made, insured, or guaranteed under this subtitle, except that the outstanding amount of such loans may not exceed the total value of the collateral. No negative comments were received and the proposed rule was adopted. This subpart was also revised to incorporate section 617, "Target Participation Rates," and section 623, "Farm Ownership Outreach Program to Socially Disadvantaged Individuals." These sections provide for a farm ownership outreach program for persons who are members of any group with respect to which an individual may be identified as a socially disadvantaged individual to encourage the acquisition of inventory farmland of FmHA and to establish target participation rates, on a county-wide

basis, to insure that socially disadvantaged groups will receive farm ownership loans and the opportunity to purchase or lease FmHA's inventory farmland. Several comments were received regarding these sections. These comments are addressed in the appropriate sections of the regulations.

**Section 1943.4—Definitions.** Several respondents, primarily special interest groups, commented that the definition for a socially disadvantaged applicant should be changed to meet the requirements of section 617 of the Agricultural Credit Act of 1987. The Agency adopts this suggestion in the interim rule.

One respondent suggested that "undivided interest" be included in this section. The Agency adopts this suggestion in the interim rule.

There were several respondents who took issue with the proposed definition of "Feasible plan." Their major concerns were that not all farming operations have equal degrees of risk and it was not proper to impose an equal reserve for risk for all types of operations, and that it was arbitrary and capricious to require that all borrowers live at an "average" standard of living. The Agency agrees and has amended this section to define a feasible plan as a plan based upon actual production and expense records which will pay all operating expenses, meet necessary payments on all debts, and provide living expenses which are in accordance with the family essential needs. The proposed rule is adopted as amended.

**Section 1943.6—Credit elsewhere.** One respondent suggested that credit elsewhere is a County Committee, rather than a County Supervisor, determination.

While it is the county committee's responsibility to determine eligibility of the availability of other credit, it is the County Supervisor's responsibility to verify the credit needs and the availability of other credit to the applicant. This information must be presented to the County Committee so they can make a factual decision regarding credit availability. The Agency has amended this section to require the County Supervisor to document the availability of adequate credit and has deleted paragraphs (a) and (b) of this section as they are adequately addressed in this section.

**Section 1943.10—Preference.** Several respondents suggested that farm ownership loans funds be designated for applicants who are members of socially disadvantaged groups to be used exclusively to assist them in achieving FO loan purposes, as outlined in



§ 1943.16 of this subpart. This requirement does not prohibit states from using their regular FO allocation to assist socially disadvantaged applicants. The Agency adopts this suggestion.

**Section 1943.12—Eligibility requirement.** Several respondents were concerned about the requirement that training or farm experience within one of the last five years is unrealistic. The Agency argues that a person who has been away from farming for a long period of time has lost all concept of the financial and production management requirements that are required in today's farming to insure a reasonable chance of success. The Agency has amended the proposed rule to provide that educational or on-the-job training within one of the past five years will suffice for experience. The Agency adopts the proposed rule as amended.

One respondent suggested that § 1943.12 (a)(4) and (b)(4)(iii) clarify character, regarding debt repayment, and whether the applicant has tried to pay his or her loans. The Agency has adopted the suggestion.

One respondent suggested that a person who has substantial farm training or experience, but who did not farm for the past five years, could have the farming ability to assure reasonable prospect of success. As mentioned above the management of a farm has changed considerably in the past few years and recent experience is necessary if one wants to have a reasonable chance of success. The Agency has amended this section to clarify that education or on-the-job training within one of the past five years will suffice for experience, which will assure those that have been out of farming for a long period of time at least has a basic knowledge of current agricultural trends. The Agency adopts this rule as amended.

**Section 1943.13—Outreach program for members of socially disadvantaged groups.** Several comments were received which suggested that State Directors establish an advisory committee with individuals of organizations working directly with farmers on the local level in order to ensure the successful implementation of the socially disadvantaged program.

The Agency has charged Farmer Program Chiefs, who are familiar with the farm ownership (FO) program, to initiate this program. The National Office will provide each State with the county target participation rates. The County Committee will continue to be responsible for establishing eligibility and County Supervisors will have loan approval authority. The Agency does

not feel that the formulation of advisory committees would be beneficial in carrying out the intent of the law. Thus, the Agency does not adopt this suggestion.

**Section 1943.16—Loan purposes.—Paragraph (b)(1).** One respondent suggested that technical assistance be defined. The Agency finds no need to define technical assistance and deletes the term from the referenced section.

**Paragraph (b)(6)(ii).** One respondent suggested that "patronized" was a typographical error. The Agency decided that "used" was a better word.

**Paragraph (c)(1).** One respondent suggested that undivided interest be defined. The Agency adopted the suggestion by adding a definition to § 1943.4 of this subpart.

**Section 1943.17—Loan limitations.** One respondent suggested that § 1943.17(a)(1) be rewritten to make it clear that the applicant's principal balance cannot exceed \$200,000 and, if there is a cosigner, the cosigner's principal balance may not exceed \$200,000. It should be made clear that the applicant and the cosigner are not limited to a combined principal balance of \$200,000.

The Agency has revised this paragraph to accommodate the suggested change.

**Section 1943.18—Rates and terms.** One respondent suggested that § 1943.18(c) should be changed to reflect that any borrower who is given a choice between two interest rates will obviously choose the lower rate.

7 U.S.C. 1927a, Loan Programs, stipulates that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by the Farmers Home Administration to housing, farm, water and waste disposal, and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Thus, the Agency cannot change this language of the proposed rule.

**Section 1943.23—General provisions.** One respondent suggested that reference to the Memorandum of Understanding between FmHA and the U.S. Fish and Wildlife Service § 1943.23(c) be referenced here and also be updated to reflect the latest changes. The Agency will be updating the Environmental Regulation in the very near future to incorporate this requirement. The Agency has adopted the suggestion of the reference and has incorporated this change to the proposed rule.

**Section 1943.24—Special requirements.** One respondent suggested that § 1943.24(b)(1)(i) should be changed

to read: "A real estate lien will be taken on such dwelling, if necessary, to adequately secure the loan."

The Agency does not adopt this suggestion. There may be equity in such property to further secure the interest of the Government.

**Section 1943.25—Options, planning and appraisals.** Several respondents commented on the need for an appraisal, no matter how small the loan request is, and the need to establish guidance as to the qualifications of the appraiser. Currently, real estate appraisals are not required when the amount of the loan is less than \$10,000. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. The Agency has also clarified this section by including contractors who have been authorized to make farm appraisals and established criteria by which the County Supervisor will determine the qualifications of these contractors. The Agency adopted these changes to the proposed rule.

**Section 1943.29—Relationship with other FmHA loans, insured and guaranteed.** One respondent suggested that this § 1943.29(b)(1) be rewritten to make it clear that the applicant's principal balance cannot exceed \$300,000 and, if there is a cosigner, the cosigner's principal balance may not exceed \$300,000. It should be made clear that the applicant and the cosigner are not limited to a combined principal balance of \$300,000.

The Agency has rewritten this section to make it clear that the total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the applicant does not exceed \$300,000 at loan closing. All references to cosigner have been removed from this paragraph. The Agency adopts the proposed amendment as changed.

**Section 1943.38—Loan closing actions.** One respondent suggested that § 1943.38(h) be eliminated regarding supplementary payment agreements.

The Agency feels that supplementary payment agreements are an essential collection tool for farm ownership loans when borrowers depend primarily upon off-farm income to make farm payments. The Agency does not adopt this suggestion.

**Section 1943.43—Subsequent FO loans.** Several respondents commented that an appraisal should be considered whenever real estate is taken as security. The present regulations state that a real estate appraisal would only be required when real estate is taken as security and certain conditions existed.



The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. This change will be in line with the requirement in § 1943.25 of this subpart. The Agency adopts the proposed amendment as changed.

**Exhibit B to Subpart A—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants.** Two respondents commented that the Target Participation Rates are calculated incorrectly. The Agricultural Credit Act of 1987 mandates that direct FO loan funds for members of socially disadvantaged groups be targeted on a county basis. However, the existing allocation formula precludes such a distribution of funds. There is insufficient allocation to ensure that at least one loan could be made in each county with members of socially disadvantaged groups. Funds will be allocated to States based on the rural minority population, with available funds targeted to counties with the largest rural socially disadvantaged population.

Since no comments were received on other areas of the proposed rule of this subpart, the proposed rule is adopted as published, except for minor necessary clarification and editorial changes.

## PART 1943

### Subpart B

This subpart provides guidance for the making of Insured Soil and Water Loans.

**Section 1943.54—Definitions.** There were several respondents who commented on the proposed feasibility definition. The comments were the same as those addressed in Part 1943, Subpart A, § 1943.4. Please refer to this section in the Agency's response.

**Section 1943.62—Soil and water loan eligibility requirements.** Several respondents commented that the regulations should be clarified that character regarding debt repayment should focus on whether or not the applicant has tried to pay his/her loans. They suggested that if a person has a history of delinquency for reasons beyond his/her control and had made a honest effort to meet the obligations that this factor should still meet the good character requirements. The Agency agrees and has adopted the proposed rule as amended.

**Section 1943.68—Rates and terms.** Several of the respondents commented that the regulations should be changed to state that "The interest rate for the loan will be the interest rate in effect at

the time of the loan approval or loan closing, whichever is lower." This requirement is set forth in the CONACT in (7 U.S.C. 1927a) Loan Programs. Thus, the Agency cannot change this language of the proposed rule.

**Section 1943.75—Options, planning and appraisals.** Several respondents commented on the need for an appraisal no matter how small the loan request is and the need to establish guidance as to the qualifications of the appraiser. Currently, real estate appraisals are not required when the amount of the loan is less than \$10,000. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. The Agency has also clarified this section by including contractors, who have been authorized, to make farm appraisals and established criteria by which the County Supervisor will determine the qualifications of these contractors.

**Section 1943.77—Relationship with other FmHA loans, insured and guaranteed.** Several respondents commented that the relationship between FmHA loans, insured and guaranteed should be clarified. The Agency agrees and has amended this section by including an example which will further clarify the relationship between the two programs. The Agency adopted these changes to the proposed rule.

**Section 1943.93—Subsequent SW loans.** Several respondents commented that an appraisal should be considered whenever real estate is taken as security. The present regulations state that a real estate appraisal would only be required when real estate is taken as security and certain conditions existed. The Agency agrees and has amended this section to require an appraisal whenever real estate is taken as security. This change will be in line with the requirements of § 1943.75 of this subpart. The Agency adopts the proposed amendment as changed.

### Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

Sections 1943.101 through 1943.150 have been removed and reserved because the program has not been funded since FY 1981 and there are no plans to fund it in the future. Removing the regulation will reduce the Government's cost of revising and maintaining the regulations. No comments were received on this so it is adopted as proposed.

## PART 1944—HOUSING

### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

**Section 1944.23—Loans to Farm Ownership (FO) Individual Soil and Water (SW), and Recreation (RL) borrowers.** Section 1944.23 has been revised to change a reference from Subpart A to Subpart S of Part 1951. No comments were received on this so it is adopted as proposed.

## PART 1945—EMERGENCY

### Subpart C—Economic Emergency Loans

**Section 1945.119—Consolidation, rescheduling, reamortization and deferral and Section 1945.149—Additional loans.** Sections 1945.119(a) and 1945.149(b) have been revised to change a reference from Subpart A to Subpart S of Part 1951 of this chapter. No comments were received on these so it is adopted as proposed.

### Subpart D—Emergency Loan Policies, Procedures and Authorizations

**Section 1945.168—Rates and terms.** Section 1945.168(c) has been revised to change the reference from Subpart A to Subpart S of Part 1951. No comments were received on these amendments so it is adopted as proposed.

**Section 1945.169—Security requirements.** Section 1945.169(a)(3) is revised to conform with applicable changes for security in other regulations as a result of comments received on this subject.

## PART 1951—SERVICING AND COLLECTIONS

### Subpart A—Account Servicing Policies

**Section 1951.7—Accounts of borrowers.** Sections 1951.7(d)(1) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Section 1951.7(f) has been deleted. Paragraph (g) has been renumbered to (f). This is no longer needed. The information will be obtained through field office terminals. Paragraph (h) has been renumbered to (g).

**Section 1951.8—Types of payments.** Section 1951.8(a) has been revised to change "Finance Office" to "lock box facility(s)."

The introductory paragraph of §§ 1951.9 and 1951.10 has been revised to provide that the rules on distribution of payments apply only after the County Supervisor decides how much of the



proceeds will be released for other purposes. This is to make sure proceeds will be released for family living and farm operating expenses before making payments to FmHA.

*Section 1951.25—Review of limited resource FO and OL loans.* Section 1951.25(b)(5) has been revised to change a reference from Subpart A to Subpart S of Part 1951.

Sections 1951.33 through 1951.49 have been removed and reserved. These paragraphs have been transferred to Subpart S of this part.

Exhibit titles of Subpart A of Part 1951 of this chapter have been removed and reserved.

No comments were received on these amendments so they are adopted as proposed.

#### **Subpart F—Analyzing Credit Needs and Graduation of Borrowers**

*Section 1951.262—Action when borrower fails to cooperate, respond and/or graduate.* Section 1951.262(c)(2) is amended to remove FmHA Forms 1924-14, 1924-25 and 1924-26 as these forms are removed from all the FmHA regulations. This was overlooked when the proposed rule was published.

#### **Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts**

*Section 1951.314—Reamortization.* Section 1951.314(a)(8) has been revised to change the reference from Subpart A to Subpart S of Part 1951.

No comments were received on this so it is adopted as proposed.

#### **Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs**

*Section 1951.558—Decision on servicing actions.* Paragraphs 1951.558 (c)(1)(ii) and (c)(1)(iii) were revised in the proposed rule to replace Forms FmHA 1924-25 and 1924-26 with Exhibit A and Attachments 1 and 2. No comments were received on this. However, in view of comments made on other regulations, these paragraphs were revised to follow the procedures Subpart A of Part 1955 of this chapter without exception.

#### **Subpart S—Farmers Program Account Servicing Policies**

The proposed rule added this regulation. Previously, the major FmHA FP loan servicing programs were dispersed throughout various regulations. The recodified regulations combines the existing loan servicing

programs as modified and include the significant loan servicing requirements of the Agricultural Credit Act of 1987 (ACT). This will make it easier for the FmHA field staff and borrowers to read and interpret the Farmer Program Servicing regulations.

This subpart was the major area of discussion of many of the comments. The following appear to be the most significant points addressed by the respondents:

Procedures for timely consideration of Preservation Loan Service Programs; shared appreciation agreements and the request for additional collateral in Primary Loan Servicing Program considerations; debt restructuring notices to accelerated borrowers who did not respond to the "Notice of Right to Request Income Release;" proposed regulatory provisions that were interpreted to prohibit reconsideration of Primary Loan Service Programs if a borrower becomes delinquent on a previously serviced loan; the definition of "circumstances beyond the borrower's control;" the definition of "good faith;" recovery value calculations; readability of FmHA notices; contents of DALR\$ computer program and printout; and what constitutes a feasible plan.

These points are discussed in accordance with the applicable Section of the Subpart.

*Section 1951.901—Purpose.* This section describes the policies and procedures that Farmers Home Administration (FmHA) will follow in servicing most Farmer Program loans. Examples of loan servicing actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, (including Softwood Timber (ST) loans) and reduced interest rates, write down of debt (including Conservation Easements), or any combination of these actions. These actions are referred to as Primary Loan Service Programs. This Subpart also includes Preservation Loan Service Programs, stated as Homestead Protection and Leaseback/Buyback and are set forth in specific Sections in this Subpart.

Several respondents were not in favor of the debt restructuring with write down. These respondents stated various reasons why FmHA should not write down FmHA Farmer Program borrowers' delinquent loans and continue with them under the regular loan programs. Generally, these respondents felt that the legislation was not fair to the many FmHA borrowers who have made sacrifices to keep their loans current. Several of the

respondents referred to the write down as "bail out legislation" for poor farm operators. One respondent stated that "our troubled farmers have caused their own problems that they are in today." One respondent stated "it seems that our Government is confused as to just what it wants to do. On one hand, they are spending billions of dollars trying to reduce the agricultural surplus and on the other hand, they are spending billions trying to keep farmers in business and producing that shouldn't be there anyway."

One FmHA farmer program borrower wrote "I feel this is most unfair and feel that I also, because I am a good farmer and did not live beyond my means, should be given the same rights and privileges. So, at this time, I am suspending payments to FmHA until it is explained to my satisfaction why I should not be given these same privileges."

Several respondents wrote in favor of the proposed restructuring of FmHA farmer program loans with write down and preservation loan service programs. One respondent wrote "loan assistance from FmHA in the form of a write down of existing debt, making it possible to modernize the plant and equipment to state-of-the-art would assure the long term existence of (name of respondent) and payout of the FmHA-backed bank loan." Another respondent writes, "I have advocated the implementation of a forgiveness clause for several years to assist those deserving farmers who, by no fault of their own, have lost everything they owned farming." Many form letter type responses were received from the public supporting the restructuring with write down of FmHA farm debt stating, "Congress passed the Agricultural Credit Act of 1987 to help family farmers save their farms. It is now up to FmHA to make sure that the debt restructuring and other programs that Congress gave FmHA the authority to use will help farmers save their farms."

The Agricultural Credit Act of 1987 (ACT) provides for substantial revision in FmHA farmer program loan servicing. The loan restructuring provisions of the Act provide for a write down of delinquent debt to the net recovery value of collateral when the return to the Government under the restructured debt is at least as great as the return from involuntary liquidation.

One respondent noted that § 1951.901 should be amended to clarify that just because the Farmers Home Administration may have made an improper decision in granting a farmer a loan, it should not be considered



unauthorized or a nonprogram loan for purpose of loan servicing.

The Agency agrees that if FmHA was at fault in issuing a loan, the farmer borrower should be provided with the same rights to loan servicing, appeals, and release of production income as any other farmer program borrower. Section 1951.901 is amended by revising to state that if FmHA or a court of law determines that FmHA was at fault in issuing a loan, the farmer borrower's FmHA loan account will not be considered unauthorized or a nonprogram loan, for purposes of Primary and Preservation Loan Service Programs. When FmHA makes every effort to correct unauthorized assistance, such loans are serviced as authorized loans and therefore may be considered for all servicing options.

One respondent stated that in § 1951.901, examples of loan servicing actions that FmHA may take should specifically state "Conservation Set-Aside."

The "Conservation Easement Program" is a form of write down of a distressed FmHA farmer program loan just as the softwood timber loan program is a form of deferral. This has been clarified in § 1951.901.

**Section 1951.902.—Policy.** Any FmHA farmer program borrower may request Primary or Preservation Loan Service Programs in this subpart at any time. The borrowers must be unable to pay their debt as scheduled before FmHA will use Primary or Preservation Loan Service Programs. The borrower's account must be managed with an overall objective of keeping the farmer in business while at the same time minimizing losses to the Government.

One respondent stated that the time required to thoroughly analyze each write down candidate was unrealistic. The timeframe should be 6 months or more.

The Agricultural Credit Act of 1987 requires FmHA to make the determination and notify the borrower in writing, of the results, within 60 days after receipt of a written request for restructuring.

Several respondents stated that since FmHA has the authority to enter into Preservation Loan Service Program agreements prior to actual liquidation and foreclosure, that all borrowers who respond to the "Notice of the Availability of Loan Service Programs" should be automatically considered for Homestead Protection and Leaseback/Buyback. The Agency agrees that all borrowers who respond to the "Notice of Availability of Loan Service Programs" should be considered for Preservation Loan Service Programs if

the borrower's debts cannot be restructured. This section is clarified to state that FmHA may enter into Homestead Protection and Leaseback/Buyback Agreements prior to any acceleration of liquidation actions.

Several respondents stated that, in the Phase I referred to in this section, it was not clear whether the tools of rescheduling and reamortization would be available to all borrowers who are already delinquent on their loans and who will be provided notice of the availability of loan servicing under the Primary Loan Service Programs. This section is amended to state that rescheduling and/or reamortization must be used before an account gets behind schedule as well as used for accounts that are behind schedule. The County Office employees will review farmer program loans annually, prior to the date the annual payment is due, in order to determine what servicing actions are needed to properly service a borrower's accounts.

One respondent suggested that the specific calculation formula contained in the regulation be stated in the discussion of Phase III of this section and, the section requiring an appraisal of all collateral, should require that the appraisals be in compliance with the standard appraisal provisions outlined in the regulation. The Agency agrees with these suggestions and has amended the rule to incorporate this comment.

Phase III of this paragraph stated that when the borrower's debts could not be restructured, the borrower is placed in Phase IV and liquidation will be required.

Several respondents pointed out that all delinquent borrowers who are sent the notice of loan service programs are entitled to apply for Homestead Protection and Leaseback/Buyback Programs prior to FmHA actually accelerating the loans and taking the property into inventory, and that these borrowers must be advised of and considered for these programs prior to actual acceleration or liquidation. The Agency agrees with this comment and has incorporated the change, along with other minor changes in language.

Section 1951.902 of the proposed rule indicated that FmHA will use an approved computer program to assist in finding and documenting the loan servicing program that will provide the best net recovery to the Government and keep the farmer on the farm.

Several respondents commented that since the ultimate decisions on servicing FmHA loans will be made through the use of this computer program, it is important that the computer program be made available to the general public.

The respondents pointed out that complete instructions should be made available to the public for comment as if it were a proposed rule.

The Agency has considered this view and has added a separate Exhibit J to fully explain and provide instructions on how the "Debt and Loan Restructuring System (DALRS)" is used to assist in finding the loan servicing programs best suited for a borrower's farming operation. Since this rule will be published as an interim rule, the public will have an opportunity to review and comment on these new exhibits. However, because of conditions in the farming community and FmHA's statutory mandate requiring rapid implementation of these rules, they will take effect as interim rules. This requires that final rules be published after the comment period.

**Section 1951.903.—Authorities and Responsibilities.** Section 1951.903, paragraph (b), provides that only State Directors are authorized to write down a borrower's debt.

The comments on this section indicated that it would be very difficult and time consuming for one person to be making ultimate decisions on write down of debt. They suggested the regulations should be outlined in sufficient detail to ensure that County Office employees are capable of making decisions on write down of debt.

The Agency agrees that the regulations should be written in sufficient detail to ensure that County Office employees can recommend decisions on write down of debt. However, the Agency does not agree that the write down be approved at any level below the State Director. The Agency currently has placed the debt settlement authority at the State Director level and believes that write down approval must remain at the State Director's level for internal control of the write down process.

This section also includes a provision that allows County Supervisors to reschedule debt or reamortize borrowers' debts only once. If further rescheduling or reamortization is necessary, then it must go to the next higher level of FmHA's supervision. Also, if any further action was needed, it would have to be based on whether the borrower was reducing the principal and making all payments on the interest.

The comments on this section indicated that these restrictions seemed to be contrary to the intent of the Agricultural Credit Act. They pointed out that denying these delinquent borrowers an opportunity to reschedule or reamortize their loans a second time



and requiring them to immediately go into principal and interest write down or other types of primary loan servicing would simply require the Government to loans more money on these borrowers' accounts.

The Agency agrees with these comments and has incorporated this suggestion.

**Section 1951.906—Definitions.** Several respondents, including FmHA field offices and special interest groups, commented on several of the definitions in this section.

One respondent stated that the definition of "delinquent borrower" should be amended to read "a borrower who has failed to make all or part of the payment which is due for 30 or more calendar days after the due date." This would ensure that borrowers who have attempted to make partial payments but are unable to make their whole payment will be provided the opportunity to use the Primary Loan Service Programs when they first begin to get into trouble on their loan payments. The Agency agrees and adopts this suggestion.

One respondent suggested that the definition of "farm plan" should prohibit the required use of Coordinated Financial Statements without consent of the borrower. The Agency agrees and the definition has been amended to state that FmHA will not require the use Coordinated Financial Statements.

A number of respondents commented on the definition of "feasible plan." Paragraph (b) of the proposed definition states "to meet scheduled payments on all open accounts and on all other debts, some of which may include delinquent taxes." One respondent recommended the definition be amended to state that if there are outstanding debts to suppliers which would not be ordinarily placed on a scheduled repayment plan, FmHA and the borrower should attempt to contact the supplier and work out a reasonable schedule of payments. This problem should be dealt with in the mediation or voluntary meeting of creditors process. See § 1951.912 of this subpart.

Several respondents objected to a 5 percent reserve requirement in the definition of a feasible plan that would allow for "risk and uncertainties." The Agency agrees that if a borrower is able to show a feasible plan without this 5 percent reserve, the borrower should not be denied FmHA's services. The 5 percent reserve requirement has been removed.

One respondent objected to the requirement that the plan must include an average standard of living for the family members, stating that many farmers for years have been living at a standard below poverty level. The

respondent stated that the average family standard of living should not be strictly based on the average of actual living expenses for farmers over that time period. The Agency agrees and has removed the reference to "average" standard of living and substituted the wording "which is in accordance with the essential family needs," along with other minor changes.

One respondent recommended that the definition of "liquidation" be amended to clarify that simply the filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's account. The Agency agrees and adopts this recommendation.

One respondent recommended that the definition of "Primary Loan Service Programs" should be amended to refer to the eligibility criteria for each of the individual types of primary loan servicing.

The Agency has recodified the loan servicing regulations. They were revised and incorporated in this subpart as indicated above. The proposed rule did remove obsolete and unfunded loan program regulations. Minor changes in language and additions in the interim rule have been made to clarify the internal effect of recodification of the regulations. The proposed rule definition of "Primary Loan Service Programs" is adopted and is consistent with the eligibility requirements of the Act.

**Section 1951.907—Notice of Loan Service Programs.** This section allows FmHA to notify borrowers whose accounts are at least 180 days delinquent of Primary Loan Service and Preservation Loan Service Programs. Paragraph (b) requires FmHA to notify borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987. This includes borrowers who did not apply for debt restructuring within 45 days after receiving the FmHA's "Notice of Right to Request Income Release."

Several respondents commented that the notice appeared to deny borrowers whose accounts have been accelerated, an opportunity to apply for any kind of Primary Loan Servicing or debt restructuring. The rule has been amended to clarify that all farmer program borrowers whose accounts were accelerated but have not been foreclosed or liquidated will be sent Exhibit A with Attachments 1 and 2. Those borrowers who do not respond within 45 days after receiving the FmHA notice will then be sent Attachment 7, "Notification of Continued Acceleration of Loans, Notice of Borrower's Rights," and Attachment 8, "Response to Notice Informing Me of FmHA's Intent to Continue to Accelerate My Loan."

Several respondents commented that paragraphs (b) and (c) of this section should be clarified to state that the 30-day period for the borrower to pay the entire payment, or request voluntary conveyance be amended to state 30 days after receipt of the farmer's response to Attachment 7. Otherwise, it is not clear whether the 30 days runs at the same time as the 45 days in the same section. The Agency agrees and adopts this recommendation, along with minor changes in language.

Several respondents recommended that paragraph (e) of this section be clarified by stating that the fact that a prior lienholder or a junior lienholder is foreclosing, does not take away the borrower's rights to receive the "Notice of the Availability of Loan Service Programs." The Agency agrees and has amended this paragraph to incorporate the change, along with other minor changes in language.

Several respondents suggested that paragraph (f) of this section be amended to clarify that, after any final FmHA decision that does not result in a resolution of the loan defaults, the account will be accelerated in accordance with Subpart A of Part 1955 of this chapter. Also, paragraph (g) of this section and paragraphs (a) and (b) of § 1951.908 were identified by the respondents as needing clarification regarding which attachments are to be sent and what information is needed to fill out a complete financial statement and to prepare a Farm and Home Plan. The Agency agrees and has made minor changes in language for clarification purposes.

Several respondents stated that the proposed regulation be clarified to make it clear that borrowers notified of Primary Loan Service and Preservation Loan Service Programs be considered for both of these programs prior to acceleration or liquidation. The respondents recommended that FmHA first consider the borrower for the Primary Loan Service Program and if not eligible or the debt cannot be restructured, automatically consider the Preservation Loan Program. If the borrower is found ineligible for either program, appeal rights should be given separately for each adverse decision. The Agency agrees with this comment and has incorporated the change in §§ 1951.909(i)(2) and 1951.911(a)(1)(i).

Two paragraphs designated (c) and (d) have been added. Section (c) covers bankruptcies pending on January 6, 1988, the effective date of the Agricultural Credit Act of 1987. The Agency has added this paragraph in response to a comment concerning the proposed rule



at § 1962.47. The respondent stated that the proposed rule would exclude borrowers who filed bankruptcies around the effective date of the Act. In accordance with paragraph (c) FmHA will send notices to the attorneys of borrowers whose bankruptcies were pending on January 6, 1988, whose accounts have not been foreclosed or liquidated.

However, as provided in paragraph (d) Chapter 7 borrowers discharged prior to January 6, 1988, but who have not reaffirmed their debt to FmHA, will not be sent the notices. This paragraph has been added in response to a comment which stated that Chapter 7 discharged borrowers should not be sent the notices because they do not have a personal obligation to pay their debt to FmHA. The Agency agrees with this comment except for borrowers who have reaffirmed their debt to FmHA. This policy is required by section 343 of the Consolidated Farm and Rural Development Act as added by section 605 of the Agricultural Credit Act of 1987 which defines borrowers as, " \* \* \* any farm borrower who has outstanding obligations to the Secretary \* \* \*". This definition continues FmHA's policy in effect on the date of the 1987 Act which provided servicing relief to Chapter 7 discharged borrowers only if they reaffirms their debt. FmHA informed the attorneys of these borrowers of this policy when they filed for bankruptcy by sending Exhibit D of Subpart A of Part 1962 of this Chapter (available in any FmHA office).

Regarding Chapters 11, 12, or 13 borrowers with confirmed plans on January 6, 1988, paragraph (d) states the attorney of these borrowers will be sent the notices if the borrowers are 180 days delinquent. These borrowers have obligations to FmHA under their bankruptcy plans. The agency believes section 605 of the Act requires that these borrowers be sent the notices.

**Section 1951.909—Eligibility.** This section has been re-titled and is set forth in the interim rule as subsection (c) of "Processing Primary Loan Servicing Requests." This section in the proposed rule states that a borrower who has applied for the Primary or Preservation Loan Service Program must meet all of the requirements listed. This section as published in the proposed rule, sets forth eligibility criteria for Preservation Loan Service Programs and some of the Primary Loan Service Programs.

Several respondents commented that there is no justification for requiring that the delinquency on the FmHA loan accounts be "due to circumstances beyond the borrower's control", and "that the borrower must have acted in

good faith" in order to be eligible for the Homestead Protection or Leaseback/Buyback Programs. The statutory provision that sets out the circumstances "beyond the borrower's control" and "good faith" eligibility requirements, relate only to the debt restructuring provisions of the Act. The Agency agrees with this comment and has incorporated this change by removing the reference to the Preservation Loan Service Programs from the section that sets forth eligibility for the Primary Servicing Programs.

Several respondents commented on the "circumstances beyond the borrower's control." The respondents stated that there is no justification for narrowing the previous acceptable definition contained in the old deferral regulations in 7 CFR Part 1951, § 1951.44(b)(1). The Agency agrees with the comment that the failure to pay real estate taxes and property insurance premiums when due is not necessarily the fault of the borrower and, therefore, should not be included in the definition of "good faith." The Agency has incorporated the change, along with other minor changes in language and additions.

Several respondents objected to FmHA requiring borrowers to give additional real estate collateral in order to restructure their loans. The respondents argue that if FmHA were to go through a forced liquidation, the only collateral that it would acquire and then liquidate to recover on the loan would be the collateral that it had at the time of liquidation. The respondents state that requiring additional security for the restructuring is in violation of the Congressional intent of the statute. FmHA has reexamined this requirement and believes that the additional collateral may be contrary to Congressional intent. Accordingly, FmHA has removed this requirement from the interim rule.

**Section 1951.910.—Primary loan service programs—additional requirements.** This section of the proposed rule has been moved to § 1951.909 and § 1951.910 entitled [Reserve]. This section lists all of the types of property that can be used to secure a reamortized or rescheduled loan.

Several respondents commenting on this section stated that while this section does not specifically state that FmHA is going to require that the borrower place all of his/her property as security when the loan is rescheduling or reamortized, the section implies that FmHA will be asking for additional security in order for the borrower to obtain rescheduling and reamortization.

The respondents state that Congress in no way intended that as a condition for any type of servicing or debt restructure, FmHA require that the borrower provide additional collateral for the restructured loan. Under FmHA's other regulations, it is described as an exceptional circumstance under which chattel will be taken to secure a real estate-type loan and real estate will be taken to secure a chattel-type loan. The respondents state that this should remain the practice. The Agency agrees that FmHA farmer program borrowers should not be required to further secure their loans as a condition for restructuring.

Paragraph (c)(7)(i) now designated § 1951.909(e)(3)(vii)(A) provides that recoverable cost items will be added to principal as of the date the new note is signed. This paragraph also states that "the County Supervisor will determine the amount of interest and principal owed on the date the new note will be signed."

Several of the respondents commented that "recoverable cost items" have not been defined in the regulation and also, that the section should clarify whether FmHA intends for the borrower to make a payment of some principal and interest on the date that the loan is deferred.

"Recoverable cost charges," as defined in 7 CFR Part 1951, Subpart A, are those which the loan agreement documents say the borrower is primarily responsible for paying and, which the Government can charge to the borrower's account. The wording has been clarified. The statute does not permit the capitalization of accrued interest that is not more than 90 days past due. This section is clarified to state that accrued interest not more than 90 days past due will be repaid in equal amortized installments during the term of the loan consolidated, rescheduled or reamortized, as applicable. Also, revisions have been made to clarify that FmHA does not require a payment of principal and/or interest on the date a loan(s) is deferred unless the borrower is able to make such a payment.

Several respondents commented on paragraph (c)(8) of this section which provides that a supplemental payment agreement be entered into when the borrower has a substantial increase in income and repayment ability during the deferral period. The respondent suggested that this section specify that when doing the analysis to determine whether there is a substantial increase in income and repayment ability, that FmHA determine whether this increase actually exists by comparing it to the



original plan developed in the course of the deferral application and, also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt repayment. The Agency agrees and has incorporated this suggestion with minor revisions for clarification. Also, this paragraph has been revised to state that a borrower may appeal an adverse action regarding the signing of a supplemental payment agreement. The borrower will be notified of any Primary and Preservation Loan Service Programs and given an opportunity to apply for them, either before or after an appeal related to a payment agreement.

Several respondents commented that the requirements of the highly erodible and conservation provision of the Food Security Act of 1985 should not be required of borrowers in order for the borrower to be eligible for debt restructuring. The Sodbuster/Swampbuster requirements apply to loan making (insured and guaranteed), transfers and assumptions, subordinations and leases and credit sales of inventory property. See Exhibit M of 7 CFR Subpart G of Part 1940. Therefore, the Agency has clarified the proposed rule to require compliance with the sodbuster/swampbuster rules only when these requirements apply.

One respondent suggested that paragraph (e)(4) be clarified to state that the borrower should only have to participate in negotiation with creditors who do not have sufficient security for their debt and who represent a substantial portion of the borrowers debt. The Agency adopted this suggestion. Also, paragraph (e)(5) of this section has been clarified as suggested by this respondent by stating that the remaining debt after restructuring with the Primary Loan Service Programs can be rescheduled/reamortized or deferred in accordance with paragraphs (a), (b) and (c) of this section.

**Section 1951.911—Processing write-down requests.** This section is now entitled "Processing Preservation Loan Service Program Request." This section as published in the proposed rule was entitled Processing Write Down Requests and has been redesignated to § 1951.909. One respondent pointed out that paragraph (a)(1)(ii) should be amended to reflect that all expenses should be based on the average holding period when calculating the recovery value of liquidated loan collateral. The Agency adopts this suggestion in the section redesignated as § 1951.909(f)(1)(ii).

Several respondents commented that paragraph (d)(3) of this section should be clarified to indicate that the borrower does not have to exclusively appeal the current market appraisal in order to be entitled to the independent appraisal. Also, the respondent suggested that the review officer as well as the hearing officer review the independent appraisal at each stage of the appeal process. The Agency agrees with these comments and has incorporated the changes in § 1951.909(i)(3), along with other minor changes to clarify the qualifications of an independent appraiser.

Several respondents objected to paragraph (e)(7) of this section that requires FmHA to take a lien on all real estate owned by the borrower if it is going to write down debt, even if the borrower had not previously pledged the real estate as security on the loan. The respondent stated that such action will put the borrower in very significant disadvantage in that the borrower will have no security in order to obtain operating credit in the future. Also, the respondent stated that Congress did not intend for FmHA to collect on restructured loans by requiring real estate security for write down of chattel loans. The Agency agrees and has removed this paragraph.

The Agency has redesignated and clarified the requirements contained in paragraph (f) regarding the processing of net recovery buyout recapture agreements. These requirements are not contained in § 1951.913 of the interim rule.

In the proposed rule, Exhibit J set forth the provisions of the Leaseback/Buyback Program. The Program has been moved from Exhibit J to § 1951.911(a) of this subpart to combine Leaseback/Buyback and Homestead Protection in the same section of the regulations under the title of "Preservation Loan Service Programs." This improves readability, the logical flow and the conformity of the regulations.

Several respondents commented that once a borrower responds to the "Notice of the Availability of Loan Service Programs," that if the applicant is not determined eligible for Primary Loan Service Programs the applicant should automatically be considered for Leaseback/Buyback. The Agency agrees and has revised the regulations to require that applicants for Primary Loan Service Programs are also considered for Preservation Loan Service Programs. These changes have been incorporated in the interim rule.

Section I.B states that the Leaseback/Buyback Program will be available to

people whose property was in inventory prior to January 6, 1988, only if the former owner/previous operator was not advised of his/her Leaseback/Buyback rights under the previous regulations.

Several respondents commented that people whose property was in inventory prior to January 6, 1988, should have the right to priority consideration for Leaseback/Buyback.

The statutory language specifically requires these individuals whose property was in inventory and such property contained a dwelling that they be notified of their rights to Homestead Protection regardless of when it was taken into inventory. The Congress, however, did not specify that those former owners whose farm property was in inventory prior to January 6, 1988, be notified more than once of their Leaseback/Buyback rights. Those former owners whose properties were acquired prior to January 6, 1988, were advised of their rights to lease or purchase the property in accordance with the provisions established by the Food Security Act of 1985. If they were not advised of these rights (for example, property acquired shortly before January 6, 1988) then they will be accorded rights under this regulation. Therefore, the Agency is not adopting this comment.

Section I.C.9 of Exhibit J of Subpart S of the proposed rule states that the previous operator is the operator who was leasing the farm at the time the property was taken into inventory.

Several respondents recommended that priority consideration should be given to an operator who has been leasing the land from FmHA and who was not the operator at the time FmHA took the land into inventory.

The statutory language for Leaseback/Buyback does not permit priority consideration be given to operators who leased the property from FmHA. Section 335(e)(1)(c)(iii), as added by Section 611 of the Agricultural Credit Act, requires that priority consideration be given to the "immediate previous family-size farm operator of such acquired property." Those operators that lease property from FmHA will have equal opportunity to lease or purchase the property when it becomes available to lease a sale to all eligible operators. The Agency did not adopt this comment.

Section I.C.II through I.B.2. of Exhibit J of Subpart S defines suitable inventory property for which FmHA can make a loan and sets forth the appropriate notice to be sent to borrowers prior to FmHA taking property into inventory; and circumstances under which FmHA



may be able to finance the purchase of the property through a credit sale.

Several respondents suggested these sections should be clarified to state that all property that is in inventory would fall within the types of property for which FmHA could make a loan and would be classified as suitable. The Agency has revised the definition of suitable property to include all farmland properties that can be used for general farming purposes regardless of size and, also, to state that an owner will be notified of the Leaseback/Buyback Programs prior to FmHA's acquiring title.

Section II.A.2. of Exhibit J, now § 1951.911(a) of Subpart S, requires FmHA to insert specific provisions into a conditional credit sale contract with the buyer. These provisions state that FmHA's obligations are contingent on the owners meeting FmHA's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close.

Several respondents commented that this section should be amended to permit closing of the credit sale at the same time as the borrower signs over the title to the property to FmHA when the owner is agreeing to voluntarily convey property in exchange for the buyback. The Agency agrees with this comment and has incorporated the change in the interim rule. Because of the possibility that FmHA could acquire the property by being a successful bidder at a prior lienholder's foreclosure sale, the provisions for a non-simultaneous conveyance and leaseback/buyback have been retained.

Section II.B.3 of Exhibit J, now § 1951(a) of Subpart S, states that when the borrower is agreeing to pay in cash, the County Supervisor will enter into the "Standard Sales Contract," with contingencies.

One respondent recommended that the contingencies of the sale contract be published in proposed form in order to obtain public comment before final rules are issued. The contingency was inadvertently not published in the proposed rule and the Agency has incorporated the contingency in the interim rule. The contingency is that FmHA must acquire title within 2 years. Comments will be received for a 60-day period during the interim period and will be considered before final rules are issued.

Section III.A. of Exhibit J, now § 1951.911(a) of Subpart S, provides for a notice to be sent to borrowers whose property has been acquired by FmHA advising them of the availability of the Leaseback/Buyback Program.

One respondent commented that borrowers should be given a specific date by which they must respond to the notice advising them of the availability of the Leaseback/Buyback Programs. The Agency has revised its rules to provide that the former owner has 180 days to make application to enter into a lease or purchase agreement. These changes have been incorporated into the interim rule.

Section III.B. of Exhibit J, now § 1951.911(a) of Subpart S, states that the spouse, child, or entity members exercising his/her priority right to Leaseback/Buyback must notify FmHA of their intent to request Leaseback/Buyback within 190 days of FmHA acquiring the property.

Several respondents commented that FmHA should notify the borrower of the date upon which the application should be submitted in order to give FmHA sufficient time to consider the application and to enter into a lease or purchase agreement with them. The Agency agrees and has revised the regulation by requiring that an application for the spouse, children or entity member must be filed within the 190 day timeframe and has removed the 190 day timeframe for entering into a lease purchase agreement. These changes have been incorporated into the rule.

Section III.C. Exhibit J, now § 1951.911(a) of Subpart S, gives the previous operator 30 days from the date he/she is notified about Leaseback/Buyback to enter into a lease or standard sales contract.

One respondent suggested that the 30-day period be extended to 60 days. This 30-day period is extremely short, considering the time that FmHA must spend to review the previous operator's application and close the transaction. The Agency agrees and has removed the 30 day requirement to enter into a lease or purchase agreement. The operator must, however, make application within 30 days. These changes have been incorporated in the rule.

Section III.D. of Exhibit J, § 1951.911(a) of Subpart S, provides for free and knowing waiver of a person's or entity's right to Leaseback/Buyback.

One respondent suggested that FmHA provide a waiver form that will be used by borrowers waiving their rights to Leaseback/Buyback Programs. The Agency has adopted this comment by adding Exhibit Q, "Waiver of Leaseback/Buyback Rights," to the subpart in the interim rule.

Section V. Exhibit J, now § 1951.911(a) of Subpart S, deals with leaseback eligibility. The County Supervisor is required to determine whether the

applicant for Leaseback/Buyback has financial management skills and financial resources to assure a reasonable prospect of success in the farming operation. Several respondents commented that "Circumstances beyond the applicant's control" is relevant only if it reflects on the applicant's management skill. The Agency agrees that management skills and financial resources are not eligibility criteria for Leaseback/Buyback and has revised § 1951.911(a) of this subpart. The County Supervisor, however, is still responsible for determining if the applicant has sufficient management skill and financial resources to meet the terms and conditions of the lease. The change has been incorporated in the rule.

Section VI.A. Exhibit J, now § 1951.911(a) of Subpart S, requires the applicant to notify FmHA of his/her intention to use a cash or credit sale if the applicant is applying for buyback.

One respondent commented that this section should be clarified to reflect that the borrower is obligated to advise FmHA of whether or not they want a cash or credit sale. The Agency has revised its notice to previous owners to advise the previous owner that the purchase may be for cash or credit sale. The revision has been adopted into the rule.

*Attachment 1—"Agreement" of this paragraph sets forth conditional Agreement for leaseback.* One respondent commented that this agreement should specify the estimated rental payments and advise in the conditional agreement that this rental payment may change if there is a lengthy period of time between the signing of the agreement and the final signing of the lease. The Agency did not adopt this comment because it has determined that the market rent values will not fluctuate sufficiently during the two year period and the actual rent amount must be known for the borrower to develop a plan of operation.

*Attachment 3—Notice of the Availability of Leaseback/Buyback of this paragraph is used to notify the previous operator to advise him/her that he/she may have the opportunity to lease or buyback the property.*

Several respondents commented that since the previous operator's priority consideration for Leaseback/Buyback is not time limited in any fashion, the previous operator's application should always take priority over a comparable application up until the time the property is leased or sold. The Agency believes that it has administrative discretion to limit the previous operator to 30 days in which to make application



for leaseback/buyback. In addition, the previous operator will have an equal opportunity to lease or purchase the property when it becomes available for lease or sale to all eligible family farm size operators. The proposed rule is adopted.

In the proposed rule, Exhibit I, now § 1951.911(b) of Subpart S, "Farmer Programs Dwelling Retention", is changed in the final rule from "Farmer Programs Dwelling Retention" to "Homestead Protection" to conform with the title of section 614 of the Act. The program was moved from Exhibit I of this subpart to § 1951.911(b) of this subpart to combine Homestead Protection and Farmland Leaseback/Buyback in the same section of the regulation under the title of "Preservation Loan Service Programs." This improves the readability, the logical flow and the conformity of the regulations. This is a result of comments received on the readability of the regulations.

FmHA first implemented the dwelling Retention program on March 18, 1986 (51 FR 9174), 7 CFR Part 1955, Subpart B as a result of the Food Security Act of 1985. The Agricultural Credit Act of 1987 revised provisions of the 1985 bill. The major revisions are:

1. A borrower may apply and enter into an agreement to lease with an option to purchase before FmHA acquires title to farm property.
2. A borrower may apply regardless of how FmHA acquires the property. This is a change from the 1985 Act.
3. Maximum homestead acreage is increased from 5 acres to 10 acres.
4. The requirement of gross annual farm/land sales of at least \$40,000 has been deleted.
5. The purchase price is the market value when an applicant exercises the option.
6. The borrower may request debt settlement for the existing balance of the FmHA debt.
7. This program applies when the primary loan service programs cannot help the borrower and FmHA has acquired the property or is about to acquire it from the borrower.

Several comments were received on the proposed rule for this program. The comments are addressed to various sections of Exhibit I of this subpart of the proposed rule.

**Section III. B. Homestead Protection.** One respondent commented that the requirement regarding the size of the property which the borrower could retain may conflict with existing local land use requirements. The requirement that the property will also include not more than 10 acres of

adjoining land is set forth in Pub. L. 100-233, Agricultural Credit Act of 1987. Thus, the Agency cannot change this language of the proposed rule. If the minimum lot size permitted under local law is in excess of 10 acres, FmHA may not be able to lease or sell the homestead protection property to the borrower.

**Section III. D. Market Value.** One respondent commented that the definition of market value should be clarified to indicate that the market value will be established by an independent appraisal. This would insure that FmHA will comply with the statutory provision that establishes the market value will be the purchase price of the dwelling if the borrower wishes to purchase the property. Sections IX and XI of this Exhibit clearly identify that all appraisals will be conducted by an independent appraiser. The Agency adopts the proposed rule as amended.

**Section IV. A. Determining Homestead Protection Property.** One respondent commented that when a borrower informs the County Supervisor of his/her intention to participate in Homestead Protection, he/she must also inform the County Supervisor of the building and property the borrower intends to include in the Homestead Protection property. However, there are no notices that are given to the borrower which would indicate the borrower's responsibility for identifying the property which would be included in the Homestead Protection property. It was suggested that the borrower be provided a notice of this responsibility. The Agency agrees and has revised Attachment 1 to Exhibit K to Subpart S and Exhibit M to Subpart S to request the borrower to submit to FmHA, a map or other description of the buildings and property to be included in the Homestead Protection property. The agency adopts this amendment as changed.

**Section IV. B. Processing Dwelling Retention Before FmHA Acquires Title.** Several respondents commented that it should be made clear that anyone who applies for Primary Loan Service and Preservation Loan Service Programs by responding to the "Notice of the Availability of Loan Service Programs" should automatically be considered for Homestead Protection unless the borrower indicates that he/she does not have an interest in the program. They also felt that FmHA should consider Homestead Protection before taking action to accelerate, liquidate, accept a voluntary conveyance or foreclose on a borrower's property if the Primary Loan Service Programs would not correct the financial problems of the borrower. The

Agency agrees and this paragraph has been revised to clarify that a borrower may be considered for Homestead Protection before acceleration and liquidation when it has been determined that the primary servicing options will not work. This action will depend upon receipt of the borrowers written request on Attachment 2 to Exhibit A of this subpart. The Agency adopts the amendment.

**Section V. Eligibility.** One respondent commented that the criteria that the gross farm income which the applicant and any spouse must have received from the farming or ranching operation be reasonably commensurate with the size and location of the farm and with local agricultural conditions. The suggestion made was that FmHA must define how the reasonably commensurate criteria will be calculated. The Agency agrees and has revised this paragraph for clarification by defining "reasonably commensurate" as relating to specific individual borrower's past gross farm income compared to farms of similar size and location. This comparison will take into account such factors as the size and location of the farm as well as the natural and economic conditions at the time the comparison was performed. The Agency adopts this proposed rule amendment.

One respondent commented that in this section there are references to "circumstances beyond the borrower's control." They felt that the reference here was different than the definition of "circumstances beyond the borrower's control" contained in the eligibility criteria for Primary Loan Servicing. They suggested if this was the case it should be made clear in this regulation. The Agency does agree with the comment and has revised this paragraph of Subpart S to give examples of conditions beyond the borrower's control such as illness, employment or conditions that make the dwelling uninhabitable. The Agency adopts the proposed rule as changed.

One respondent commented that the eligibility criteria that requires that the borrower must have continuously occupied the homestead property during the 6-year period preceding the calendar year in which the application is made for Homestead Protection is arbitrary. This requirement is from Pub. L. 100-233, Agricultural Credit Act of 1987. Thus, the Agency cannot change this language of the proposed rule.

One respondent commented that borrowers who applied for Homestead Protection should have to meet the same requirements as all other applicants who



desire to purchase FmHA acquired property. These people have to be creditworthy, acted in good faith, and have sufficient income to repay the loan. Those borrowers who are eligible for homestead protection must have sufficient income to make the rental payments for the term of the lease. The statute does not require that the borrower acted in good faith during the term of the previous loan; thus, the Agency cannot change this language of the proposed rule.

**Section VI. Transfer of Dwelling Retention Rights.** One respondent felt that this paragraph should allow for the transfer or assignment of Homestead Protection rights to other dependent members of the applicants family, besides the spouse. The reason was that there may be other dependent family members who are old enough to be able to maintain the property. The Agency does not agree as Pub. L. 100-233, Agricultural Credit Act of 1987, provides that in the case of death or incompetency of such borrowers, such rights and agreements shall be transferable only to the spouse of the borrower if the spouse agrees to comply with the terms and conditions thereof. Thus, the Agency cannot change this language of the proposed rule.

**Section VIII. Property Requirements.** One respondent commented that if a borrower was interested in the cancellation of the debt, that the borrower should be responsible for paying any cost relating to Homestead Protection, such as surveys, appraisals, etc. The respondent offered a suggestion that the first appraisal be paid by the FmHA as it is the seller. The Agency has determined that the costs associated with the sale of the Homestead Protection property, such as surveys, appraisals and legal descriptions necessary to define or describe the property will be paid by the Agency. The cost to the lessee, if he/she exercises the option to purchase will be the same cost that an ordinary purchaser would be required to pay. The Agency chooses to adopt the comment.

**Section X. Term of the Lease and Exercising the Option.** One respondent commented that it should be made clear that, if a borrower appeals FmHA's decision to terminate the lease, the termination of the lease will not take place until after all of the appeals are completed. The Agency agrees, has amended the proposed rule accordingly.

One respondent commented that this section should be clarified to indicate that borrowers who exercise their rights to priority consideration for lease or sale of the rest of the farmland under the farmland Leaseback-Buyback Program,

will not be considered as interfering with the Government's efforts to lease or sell the property. The Agency agrees and has amended the proposed rule to clarify that an applicant exercising his/her rights under the Leaseback-Buyback Program will not be considered as interfering with the Government's efforts to lease or sell the property. The Agency adopts comment and has revised the rule accordingly.

One respondent commented that the term of the lease "not less than three years" was too restrictive. The respondent stated the statutory provision says that the lease term will be up to five years upon the borrower's request. Thus, the borrower should be able to enter into a lease agreement for one or two years. The Agency agrees and has revised the regulations to provide for a lease up to 5 years to be consistent with the provisions of the Agricultural Credit Act of 1987 and the terms provided for leaseback-buyback. The Agency adopts the change as proposed.

Several respondents commented that the requirements in section XI for a second appraisal is unnecessary as the Food Security Act of 1985 indicated FmHA would sell the Homestead Protection property if the price was determined by a independent appraiser done within six months of the application for Homestead Protection. The Agricultural Credit Act of 1987 provides that the borrower has the first right of refusal to reacquire the Homestead property on such terms and conditions as FmHA determines, but FmHA may not demand a payment for the property in excess of the current market value established by an independent appraiser. The Agency in the proposed rule established the concept of two appraisal to accommodate the 1987 Act as to the current market value requirement. The Agency has amended the proposed rule to require a second appraisal only if the first appraisal is more than one-year old as it will insure that the lessee will obtain the dwelling at the current market value.

One respondent commented that the lease agreement should clearly state that a borrower must notify FmHA in writing that he/she intends to exercise the option to purchase, and that he/she would like to be considered for a credit sale through FmHA. The proposed lease agreement in paragraph 9(1) sets forth the requirement that the lessee may exercise the option to purchase at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed written statement notifying FmHA that the lessee is

exercising the option to purchase the property. The Agency adopts the proposed rule.

**Attachment 2—Dwelling Retention Program Agreement.** One respondent commented that "FmHA has commenced action to foreclose" indicates the next step is foreclosure. It was further stated that in many instances FmHA may not have actually initiated a foreclosure action when a borrower is asked to sign this agreement and this reference to foreclosure could cause a misunderstanding. The Agency agrees and has modified this paragraph to state "Borrower's FmHA loan is in default which could result in the loss of the borrower's property."

One respondent stated that where FmHA must acquire fee title to the Homestead Protection property seems to indicate that if the borrower is not liquidating all of the real estate property securing the loan but, rather, is simply conveying the part of this property which includes Homestead Protection property, they may not be eligible to obtain the Homestead Protection. It was suggested that FmHA should consider a partial liquidation which would allow the borrower to convey a portion of his/her real estate in exchange for Homestead Protection lease and service the remainder of the debt through the Primary Loan Service Programs. The Agency has amended this section by not referencing the liquidation of the farm property. The borrower may apply for Leaseback/Buyback which, if approved, would not require liquidation of the farm. The Agency will not authorize the combination of Primary and Preservation Programs. By keeping the Primary and Preservation Programs separate, it will ensure that the borrower has received the maximum write-down of the debt and also insure that if the primary programs will not assist the borrower he/she has the option of retaining the dwelling. The Agency adopts the proposed rule as revised.

One respondent commented on the rental price for the Homestead Protection property and that for a borrower who is considering voluntary conveyance, it is very important that he/she be informed up front of the lease terms as this information will have a bearing on the borrower's decision if it is to his/her advantage to enter into the voluntary conveyance in exchange for the Homestead Protection Agreement. It was suggested that FmHA determine the rental price when negotiating with the borrower prior to signing the Homestead Protection Program Agreement. The Agency agrees and has amended the



agreement to provide that the rental will be determined before the agreement is executed.

It was also pointed out by the respondent that in some instances a lengthy period of time between the signing of the Homestead Protection Agreement and the actual leasing of the property may occur and that it should be made clear that if the lease does not begin because of FmHA's inability or failure to comply with the local laws, the borrower's eligibility for Homestead Protection will not be affected. However, if under local law it is impossible to create a Homestead Protection lot with a maximum of 10 acres (i.e., local law requires a larger parcel), it will be impossible to provide the borrower with a Homestead Protection property. The Agency agrees with the comment and has amended this paragraph to provide the right for an appeal.

One respondent commented that the Homestead Protection Program is confiscatory and self-servicing on the part of the Government and that a borrower should not be required to sign away or waiver any rights that they may have in fee title and homestead exemption rights. The Agency does not agree as the Homestead Protection Program provides borrowers an opportunity to reacquire the homestead they originally pledged as security for loans. The eligibility requirements for the Homestead Protection Program are all required by law and are designed to provide borrowers with a second chance to save their homesteads if they are faced with the prospect of losing their entire farm. In addition, any State law(s) granting greater homestead rights than Federal law, will prevail. The Agency adopts the proposed rule.

**Section 1951.912—Mediation.** This section discusses FmHA's participation in the Mediation Program. It states that where State programs of mediation make participation voluntary on the part of creditors, FmHA's participation will also be voluntary.

Several respondents stated that this section implies that if the State program is voluntary, FmHA may, in that State determine that it simply will not participate in that State's program. The Agency did not intend to imply this interpretation and therefore has rewritten this section to clarify that FmHA will participate in mediation programs where a State has a USDA certified mediation program. However, where a State's mediation program makes participation in mediations voluntary on the part of creditors in that State, FmHA's participation will also be voluntary. Since FmHA favors the use of

mediation, of course, it ordinarily will decide to participate in mediations conducted under such a program. The Agency has also incorporated other minor changes in the language to clarify how FmHA shall participate in a certified State Mediation Program.

Several respondents commented that paragraph (b), which relates to FmHA's organization of voluntary meetings between the borrower and creditors, be clarified to show that FmHA is willing to make some adjustments in its payment schedule and is not simply expecting the other creditors to make such concessions. The Agency agrees with this comment and has incorporated changes for clarification, along with other additions and minor changes in language, in the interim rule.

Paragraph (b)(3) states that the State Director will appoint an FmHA employee not previously involved in servicing of the borrower's account to participate in the meeting with creditors.

One respondent commented that the notice sent to the borrower advising them of the date of the meeting should state that the borrower has an opportunity to request someone other than the County Supervisor to represent FmHA at the meeting. The Agency agrees and has incorporated this in the rule.

Several respondents commented that FmHA should make it clear in paragraph (b)(4) that whenever the net recovery to FmHA will be greater using the write down than to go through foreclosure, that FmHA will continue to use the write down regardless of the actions of the other creditors. The Agency has incorporated this, along with other minor additions.

Paragraph (b)(5) relates to agreements reached at the "meeting of creditors."

One respondent commented that it is important to obtain the borrower's written signature on the agreement as well as the other creditors, demonstrating that all parties are in actual agreement. The Agency agrees and has incorporated this comment.

One respondent recommended that a paragraph be developed in this section requiring State Directors to develop a State supplement that describes how FmHA will participate in its State Mediation Program. The respondent stated that all of the various State Mediation Programs are substantially different. This suggestion has been incorporated and also, a paragraph has been added to clarify the duties of the representative at the meeting of creditors when there is no certified State Agricultural Mediation Program.

The rule has also been revised to suggest that State Directors use a

mediator in the meeting of creditors when qualified mediations are available.

**Section 1951.914—Servicing approved primary loan service program.** This section states the terms and conditions with which FmHA loan notes may be consolidated, rescheduled or reamortized during the Shared Appreciation Agreement period.

One respondent commented that FmHA will be in violation of statutory intent if it does not make consolidation, rescheduling and reamortization available to the borrower again before it takes action on a delinquency that develops during the shared appreciation period. The proposed rule states that FmHA will not consolidate, reschedule or reamortize loans during the shared appreciation period. The Agency agrees with the respondent and has incorporated the comment with other minor changes to permit such actions during the shared appreciation agreement period and has entitled this section "Servicing Primary Loan Service Programs."

Paragraph (d)(1) provides for the borrower to pick an appraiser from the list of three provided by FmHA to do the appraisal at the time the recapture will take place.

One respondent commented that since the borrower and FmHA will share in the cost of the appraisal at the end of the recapture period, it is important that the appraisal be done only if it is absolutely necessary. If the recapture will take place as a result of conveyance by the borrower and an appraisal is done along with the sale or conveyance, that appraisal should suffice for purposes of determining the amount of recapture.

The Agency believes that it is necessary that the appraiser who conducts an appraisal of the real estate security involving a Recapture Agreement be both qualified and independent. Since FmHA is responsible for collecting the amount due under the agreement, the appraisal must be accurate. In cases where the borrower voluntarily conveys the property to FmHA, then FmHA would complete the appraisal and the borrower would have no appraisal costs unless he/she chose to have an approved independent appraiser complete an appraisal at the borrower's expense. The proposed rule is adopted with no change.

Paragraph (d)(2) relates to notifying the borrower of the amount due to be recaptured. This paragraph requires that the borrower pay the recapture amount within 90 days or the notice of the borrower's account will be treated as



delinquent and FmHA will proceed with collection efforts, which may include foreclosure.

Several respondents commented that the recapture calculations should be appealable, and that the borrower should receive the "Notice of the Availability of Loan Service Programs" prior to acceleration, liquidation or foreclosure. Also, the respondents commented that FmHA should make an attempt to ensure that the shared appreciation agreements alone do not force farmers off their land. FmHA should give the borrower the choice to amortize the recapture portion over the remaining life of the loan. The Agency agrees with these comments and has incorporated the changes, along with other minor changes in language.

**Section 1951.916—Exception authority.** This section sets forth the Administrator's authority to make an exception, on an individual case basis, to any requirement or provision of this subpart which is not consistent with the statute or other applicable law if the requirement or provision would adversely affect the Government's interest.

Two respondents commented that the exception authority leaves open the possibility of some people to receive special treatment and recommended that there be no exceptions to the rule. The Agency believes that it is necessary that such authority be available. In a rule of this magnitude, all situations are seldom covered. An exception authority is necessary to effectively administer the program. The Agency adopts the proposed rule as modified to clarify that the exception authority may also cover omissions in the regulations and address situations such as where the immediate health and/or safety of tenants or the community are endangered.

**Section 1951.917 FmHA Debt Restructuring Support Teams (DRST).** This section has been added to provide State debt restructuring support teams to be deployed in States when unusually large number of Primary and/or Preservation Loan Service Program applications are received. State Debt Restructuring Support Teams (DRST) will consist of a team leader and team members, selected by the State Director. This section has also incorporated provisions for National Office DRST team leaders to assist State Directors in training of personnel and organizing the processing of debt restructuring activities. The Agency has added this section to assure that when unusually large numbers of Primary and Preservation Loan Service Program applications are received that adequate personnel are assigned to assist in

rendering prompt service to farmers in serious financial difficulty.

**Section 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).** This section has been added providing for State Debt Restructuring Assessment Teams (DRAT) in order to monitor Primary and Preservation Loan Service Program processing. State Directors are required to deploy DRATs on a continuing basis to areas having unusually large numbers of Primary and Preservation Loan Service Program activity. The teams will monitor debt restructuring processing activities in order to minimize loan servicing errors, especially in determining eligibility and calculating net recovery value and debt write-down. The Agency has added this section to assure that problems are found and appropriate corrective action is promptly taken. State Director team leader reports will be monitored by the Assistant Administrator for Farmers Programs.

**Exhibits and Attachments.** The proposed rule has numerous Exhibits and Attachments for communicating with borrowers. These are identified as Exhibit A with Attachments 1 through 10, include detailed information on the availability of Primary and Preservation Loan Service Programs. They also provide detailed explanations of the forms used and deadline and procedures involved in applying for assistance under the debt restructuring provisions of the Agricultural Credit Act of 1987.

As required by the Agricultural Credit Act of 1987 (Act) some of these notices will be sent to borrowers who received the notices involved in *Coleman v. Lyng*, 663 F. Supp. 1315 (D.N.D. 1987). Both the Government and *Coleman* Plaintiffs have appealed *Coleman* to the Eighth Circuit. The Government sought an expedited hearing in *Coleman* because it believes that the Agricultural Credit Act of 1987 (Act) moots the June 2 injunction and certain elements of the May 7 decision. Recently, the Eighth Circuit denied an expedited hearing and set a hearing date of September 19, 1988. However, section 624 of the Act requires that final rules be implemented within 150 days after January 6, 1988, the effective date of the Act.

Several provisions of the Act require that borrowers who received the notices involved in *Coleman* also receive the new notices. The Agency has attempted to resolve these complexities within the rulemaking process. The *Coleman* decision found that FmHA must give a separate election of options for each loan accelerated and for each reason for the proposed adverse action. However, the Court based this requirement on its analysis that FmHA's previously used

Form FmHA 1924-26 (Borrower Acknowledgement of Notice of Intent to Take Adverse Action) required borrowers to make a binding election of one type of option on Form FmHA 1924-26, the response form to Form FmHA 1924-25 (Notice of Intent to Take Adverse Action). However, because such a binding election of options is now prohibited by section 331D(b)(2) of the Consolidated Farm and Rural Development Act, as amended by section 605(b)(2) of the Agricultural Credit Act of 1987, these rules do not require borrowers to select among the options offered.

The process used by these interim rules is a sequential one. All borrowers who are 180 days delinquent or who have been accelerated (but not thereafter foreclosed or liquidated) will receive Exhibit A with Attachments 1 and 2 of this subpart. These notices inform borrowers that their payments to FmHA are seriously behind schedule. As required by section 605 of the Act, the notices also provide a summary of all primary loan service programs and preservation loan service programs, copies of the forms needed to apply, advice on how to get copies of the FmHA regulations, and a description of the FmHA appeal process. The May 7 *Coleman* decision ordered FmHA to prepare a similar, but less comprehensive, summary of servicing options which would be available to borrowers upon their request. The *Coleman* summary was intended to supplement the notice forms and provide enough information for borrowers to make a choice between the options offered. As mentioned above, these interim rules do not require or permit a binding choice between the options. Attachment 1 of Exhibit A of this subpart contains the summary required by the Act. In these interim rules, FmHA has considered and substantially adopted the summary prepared by the *Coleman* Plaintiffs.

However, the Act also requires that the summary contained in the new notices offered additional options which were not in existence at the time of *Coleman* (e.g., debt write-down). The preservation loan service options which were expanded by the Agricultural Credit Act of 1987 were not part of the *Coleman* case. Borrowers who receive Exhibit A and Attachments 1 and 2 will be considered for all the primary and preservation loan service options if they return Attachment 2 of Exhibit A of this subpart within 45 days of their receipt of these notices.

Certain other *Coleman* borrowers and borrowers with new defaults will be



sent different notices. Borrowers who converted FmHA security, borrowers who are 180 days delinquent and also converted FmHA security, or borrowers who have violated their nonmonetary agreements with FmHA will receive Attachments 1, 3 and 4 of Exhibit A of this subpart. These notices describe the borrower's defaults with FmHA.

However, they also offer the borrower the opportunity for a meeting with FmHA, a hearing and the opportunity to apply for servicing. To comply with the *Coleman* orders and section 605 of the Act, these borrowers also do not have a choice among the options offered. As noted by the *Coleman* Court, there may be more than one loan involved and/or more than one reason for default. The *Coleman* Court concluded that the notices in this situation required a choice by borrowers between servicing or appeals. In the Court's view, while borrowers who chose servicing would also get appeals, borrowers who chose appeals would not get servicing. Under these interim rules all borrowers will clearly have the option of remedying or appealing an alleged conversion of security property by requesting a meeting or a hearing, at the same time as they have the option of requesting servicing to correct their delinquency. To pursue these options, these borrowers must simply return Attachment 4 after checking the appropriate item or items.

All *Coleman* borrowers and other borrowers who apply for servicing but are rejected will receive Attachments 5 and 6. These notices inform them of FmHA's servicing calculations and the reasons why FmHA is rejecting their servicing request. These notices inform borrowers that FmHA intends to foreclose their accounts because it believes they cannot develop a feasible plan or do not qualify for servicing options. Unlike Form FmHA 1924-26, Attachment 6 does not require borrowers to make a binding choice between the options. Rather, Attachment 6 offers these borrowers the opportunity for a meeting and a hearing, and the opportunity to pursue preservation loan service options. Certain of these borrowers may also purchase the property at a reduced value. However, borrowers are permitted to choose one or more of these options. Like the other notices of the subpart, the notice does not require a binding election of options. Of equal importance the notices are clear and readable. In Attachments 5 and 6, FmHA has adopted the format and a substantial amount of the language suggested by the *Coleman* Plaintiffs.

Attachments 7, 8, 9, and 10 may also be issued to *Coleman* borrowers and other borrowers who do not respond to the servicing notices within the required time. Attachments 7 and 8 continue the accelerations of borrowers who have not applied for servicing. Attachments 9 and 10 are notices which propose to accelerate or continue the acceleration of borrowers who reject FmHA's offer to restructure their debts. Attachments 9 and 10 provide hearing rights in this situation. These notices are also issued to nonaccelerated borrowers who have not applied for servicing, and offers them the opportunity to appeal the alleged defaults.

These notices (Attachments 1-10 of Exhibit A of this subpart) are published with these interim rules. They comply with the *Coleman* decisions to the extent allowed by the Agricultural Credit Act of 1987 and are required by law to be issued. FmHA will eliminate Forms FmHA 1924-14, 1924-25 and 1924-26 involved in the *Coleman* case. Instead the Agency will use Exhibit A and Attachments 1-10 for each instance of default. The borrower will receive one, or at the most three, sets of notices with Exhibit A. The number of notices is determined by whether the borrower applies for servicing and qualifies for servicing and accepts FmHA's restructuring offer. In implementing these interim rules, the Agency is complying with the intent of Congress which stated it would be resolving the *Coleman* litigation by enacting the Agricultural Credit Act of 1987.

Several respondents commented on the number and readability of the notices. One respondent did an in-depth, highly detailed analysis of the language and organization of the various notices. This respondent also hired a readability expert who found the proposed notices short on clarity and general design. The respondent redesigned and rewrote the notices in a form that the Agency will use with certain modifications so they can apply to more borrowers. These comments were also supported by several other farm groups and State officials throughout the Midwest farm belt. Specifically, the revised forms include Exhibit A and Attachments 1, 2, 5 and 6.

Exhibit A—Attachments 1 and 2 have been written so that they are readable and understandable to the FmHA borrower.

Exhibit A—Attachments 3 and 3A have been deleted. These notifications were to be used in cases where borrowers' FmHA loan accounts were accelerated between November 1, 1985, and May 7, 1987, who did not request

debt restructuring and release of normal farm income.

Several respondents commented that there should be no need for this Notice provision since the statutory language requires all borrowers at least 180-days delinquent to receive "Notice of the Availability of Loan Service Programs." It was not the intent to exclude these borrowers as they would have received the Notice because they are at least 180 days delinquent. The Agency agrees and has deleted these exhibits.

Exhibit A—Attachments 3 and 4 in the interim rule are notices sent to borrowers with non-monetary defaults, non-monetary defaults with monetary defaults and when a prior lienholder or junior lienholder is foreclosing. This Notice advises the borrower that FmHA intends to accelerate their FmHA loan accounts because of unapproved disposition of security property; they have stopped farming; or have violated other provisions of their loan agreements with FmHA. These borrowers also will receive Attachment 1 of Exhibit A, "Primary and Preservation Loan Service Programs," and are told they can apply for them by returning Attachment 4 within 45 days of their receipt of the notices.

Several respondents commented that certain paragraphs need to be clarified to make it easier for the borrower to understand what allegations may be contested and/or appealed if the situation is not resolved during a meeting with FmHA officials. The Agency agrees and has incorporated the clarification. Also, Exhibit A—Attachment 6, "Response to Notice of Intent to Accelerate or Continue Acceleration and Notice of Borrower's Rights," has been changed to clarify that the borrower is requesting consideration for all Primary and Preservation Loan Service Programs, including Loan Deferral and Debt Write-Down when the borrower responds to Exhibit A—Attachments 5. Exhibit A—Attachments 5 and 6 have been redesignated Exhibit A—Attachments 3 and 4 respectively.

Exhibit A—Attachment 5, "Notice of Intent to Accelerate or Continue Acceleration and Notice of your Rights" is used to notify borrowers of their right to meet with FmHA officials; to pay FmHA the net recovery value of the collateral; to request voluntary conveyance of the collateral to FmHA and/or advise the borrower of their Preservation Loan Service Program rights and appeal rights, when a feasible plan cannot be developed or the borrower is ineligible for primary loan servicing for other reasons. Attachment



6 of Exhibit A is used by the borrower to respond to Attachment 5 of Exhibit A.

Several respondents' comments provided some clarification language to reflect when FmHA has determined that a feasible plan of operation cannot be developed using all combination of Primary Loan Service Programs, including the Softwood Timber Program, and Conservation Easement Program. Also, the Attachment has been retitled and restructured to provide a dual notification for both borrowers with accelerated and non-accelerated FmHA farmer program accounts. Attachments 7 and 8 of Exhibit A have been designated as Attachments 5 and 6 of Exhibit A along with changes in language style for clarity and readability.

Attachment 7 of Exhibit A has been retitled and changed to be used to notify borrowers of their rights, whose FmHA loan accounts have been accelerated, fail to respond to Attachment 1 of Exhibit A. Attachment 8 of Exhibit A is used by the borrower to respond to Attachment 7 of Exhibit A.

Exhibit A—Attachment 9, is being modified to notify borrowers who do not apply for or reject FmHA's offer for Primary Loan Service Programs. Attachment 10, "Response to Notice of Intent to Accelerate and Notice of Borrower Rights," will be used by the borrower to respond to Attachment 9 of Exhibit A.

Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture," has been changed for administrative purposes for capturing and reporting information on loans written-down with other changes in language.

Exhibit C, "Equity Recapture Agreement," has been retitled as "Net Recovery Buy Out Agreement," to clarify its use for recapturing the difference between the net recovery value and market value of the collateral when sold by the borrower within 2 years of purchase by the borrower at net recovery value. The language of the Exhibit has been clarified to state that the new mortgage or deed of trust will be released 2 years from the date of the recapture agreement if the borrower does not sell or convey the property. This change was made after considering a comment that the Agency is required to release the security instrument after the 2 year period.

Exhibit D, "Shared Appreciation Agreement," has been adopted along with other minor changes in language.

Exhibit E, "Notification of Request for Mediation or Meeting of Creditors," has been amended to state why the borrower is unable to develop a feasible Farm and Home Plan and why other

creditors may need to adjust the borrower's debt in order for the borrower to qualify for Primary Loan Service Programs. Other minor changes in language have been made.

Exhibit F, "Notification of Offer to Restructure Debt," has been amended to clarify that the borrower may accept the FmHA restructuring offer not later than 45-days from receipt of the Notice. Also, Attachment 1, "Acceptance of Offer to Restructure My Debt," has been added to provide a response form for borrowers who are accepting an offer to restructure debt.

Exhibit G, "Deferral, Reamortization, and Reclassification of Distressed Farmer Program Loans for Softwood Timber Production Loans," that provides eligibility guidelines and processing procedures has been amended to state that accurately accounting for sale of security means that the borrower has complied with the reporting and accounting requirements. This change along with other minor changes in language and additions has been made.

Exhibit H, Primary Loan Service Programs Farm Debt Restructuring Conservation Set-Aside Easement), sets forth the process for determining the amount of loan that is to be written off in exchange for the conservation easement.

The major points are as follows:

*Major Points I.* The land must be suitable for conservation, recreation and/or wildlife habitat purposes and secures an FmHA loan that was closed before December 23, 1985.

*II.* The land must be wetland, wildlife habitat, highly erodible or environmentally important upland that, except for wetland and wildlife habitat, was row cropped for the three years prior to December 23, 1985.

*III.* FmHA may reduce the debt in exchange for an easement on a portion of the farm.

*IV.* An easement review term will review each site and make a report to FmHA.

*V.* The term of the easement must be for a minimum of 50 years.

*VI.* An enforcement authority will assure that the purpose of the easement is accomplished.

*VII.* The easement land cannot be used for agricultural purposes during the term of the easement. However, if the land is in the Conservation Reserve Program (CRP) prior to being used for easement purposes, the CRP contract will continue but the farmer will not collect the CRP payments.

The title of the program is shortened for clarity and ease of use by eliminating the word, "Set-Aside".

*Paragraph I. General.* One respondent suggested that "wildlife habitat" be added as a purpose for a conservation easement. The Agency adopts this suggestion. Several comments were received suggesting that Conservation Easement be considered before write-down, as a Primary Service Program and that they not be considered in the net recovery determination.

The Agency adopts the suggestion that Conservation Easements not be considered in the net recovery determination. A Conservation Easement will be considered before write down, if the borrower submits the appropriate form and the conservation easement enables the borrower to develop a feasible plan. FmHA's "Primary and Preservation Loan Service Programs," which is Attachment 1 of Exhibit A of this subpart, tells borrowers how to apply for a conservation easement. Attachment 1 explains that borrowers wanting to apply for a conservation easement must submit an Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm showing the approximate number of acres for the conservation easement and return it with Attachment 2 of Exhibit A of this subpart within 45 days of receiving Attachment 1. If the borrower does not apply for a conservation easement at this time, the borrower will be considered for conservation easement if debt write-down does not produce a feasible plan to determine whether a conservation easement when combined with debt write-down will produce a feasible plan.

This method of processing is consistent with FmHA's general servicing policy which is to keep borrowers on the farm and avoid losses to the Government. The mandate requires FmHA to use the least costly servicing options short of write-down (which now is defined to include conservation easements) if these options allow the borrower to develop a feasible plan of operation. The policy is explained in the § 1951.902 of the proposed and interim rules. See also 53 FR 18395 (May 23, 1988) in the preamble of the proposed rules for additional discussion of the policy. The policy received no adverse comments except as to the order of processing for conservation easements. The Agency has attempted to clarify the processing of conservation easements as explained above. Borrowers have the opportunity to be considered for a conservation easement both before and after debt-write down. If FmHA rejects a borrower's request for a conservation easement (or any other primary loan



servicing option), the borrower will have the opportunity to appeal the adverse decision.

**Paragraph I (d).** A respondent suggested that the definition of wildlife habitat be expanded to include wetlands and waters which adjoin a borrower's farm.

The agency does not adopt this suggestion because there is no statutory authority to take easements on properties other than from FmHA borrowers.

One respondent suggested that the definition of "upland" in paragraph (1)(c) be expanded to areas that are contributing to nonpoint source pollution of surface or ground water.

The Agency believes this suggestion goes beyond the intent of the statute, therefore, it will not be adopted.

**Paragraph III. Establishing Easement Review Team.** One respondent requested that Conservation Districts be authorized to serve on the Easement Review Team to help insure local community input.

The Agency adopts the suggestion.

**Paragraph IV. Responsibilities of the Easement Review Team.** One respondent recommended that the rights and restrictions that accrue to the holder of the easement, such as the right to permit public access to hunt and fish on easement land, be clarified. All rights and restrictions relating to the easement are set forth in the easement forms, Form FmHA 1951-39 and FmHA 1951-39A, in accordance with the Easement Review Team recommendations on an individual case basis. These Forms are available in any FmHA office. Public access to hunt and fish on easement land or other rights would have to be determined on an individual case basis by the easement review team; therefore, the recommendation is not adopted.

**Paragraph VI. Terms of Easements.** Several respondents suggested that farming be authorized on easement land while one large conservation organization recommended that the borrower not crop easement land.

The Agency believes that the intent of the statute is to remove land from farming by placing it into conservation, recreation and wildlife uses. Except for wetland and wildlife habitats, the statute requires that such land had to have been row cropped for 3 years prior to December 23, 1985; therefore, we are not adopting this suggestion.

One respondent stated that the term of the easement should be in perpetuity rather than a minimum of 50 years.

The existing regulation provides for perpetual easements under certain conditions. The Agency believes the elimination of the 50-year minimum

easement term would be contrary to the intent of the statute.

**Paragraph VII. Determining the Amount of Farmer Program Debt That can be Cancelled.** One respondent suggested that the amount of debt forgiveness not be limited to the value of the land held as collateral.

Section 349(e) of the CONACT limits the amount of debt forgiveness to not more than the value of the easement land or the difference between the debt and value of the easement land, whichever is greater. Therefore, the Agency does not adopt the suggestion.

Several respondents stated that the proposed method used to calculate the amount of debt to be cancelled is incorrect.

The Agency believes its method for calculating the amount of debt to be cancelled is correct. The respondents do not consider the statutory requirement limiting the value of the easement land and the easement debt to an amount that is not in excess to the value of the easement land. Also, the respondents incorrectly interpreted the difference between the debt and value of the land to mean the total farm debt and total land value rather than the difference between the debt against the easement land and value of the easement land. Therefore, the request for a change is not adopted.

A respondent stated that the reference to paragraph (VI) found in paragraph VII B should be changed to paragraph (VII).

The Agency agrees and adopts this suggestion.

Two respondents suggested that the borrower should pay the cost of title searches, surveys, recording fees, etc.

The Agency elects to pay such costs to encourage the use of conservation easements and to assist borrowers who are unable to repay their FmHA loans without the easement to remain in farming. This suggested change is not adopted.

**Paragraph VIII. Violation of Terms and Conditions.** Two respondents suggested that the FmHA borrower be responsible for all costs incurred by the enforcement authority. The suggestion is adopted.

**Paragraph IX. Responsibilities of the Enforcement Authority.** Two respondents recommended that FmHA assign its rights and interests as the holder of the easement to the Enforcement Authority.

The Agency will not adopt these recommendations because the statute does not provide authority for the Secretary of Agriculture to assign its interest as the holder of the easement.

Exhibit I, "Farmer Program Homestead Protection," and Exhibit J,

"Farmer Program Leaseback/Buyback," explained the eligibility and processing procedure in the proposed rule. Section 1951.911 of Subpart S of Part 1951 of this chapter now contains the regulations relative to the Preservation Servicing Programs.

Exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral," is to be used for determining the value of net recovery from involuntary liquidation. Exhibit J has been redesignated and titled, "Debt Loan Restructuring System (DALRS)," to be used to find the Loan Servicing Programs best suited for the borrower's farming operation, and

The Agency agrees with several respondents that commented that it is imperative that these programs and/or the instructions describing exactly how the program for making the calculations for restructuring farm loan debt be made available to the public. The new exhibits explain in detail how the software for DALRS works and how the recovery cost will be calculated by the computer. The computer printout will indicate if the Government will gain more by continuing with borrower by providing Primary Loan Servicing or by obtaining the net recovery value through liquidation as required by the Act. The interim rule is amended to incorporate these additions.

Exhibit K, "Notice of Consideration for Preservation Loan Service Programs" and Attachment 1, "Response to Notification of Consideration for Preservation Loan Service Programs," has been added.

Several respondents commented that when borrowers respond to the "Notice of the Availability of Loan Service Programs," they should automatically be considered for all Primary Loan Servicing Programs. If they are unable to qualify for any of the Primary Loan Servicing Programs, FmHA should automatically consider them for Homestead Protection and Leaseback/Buyback.

The Agency agrees, unless the borrower responds to "Notice of the Availability of Loan Service Programs," the borrower will be considered for Preservation Loan Service Programs. Exhibit K will be used to notify borrowers that their application for Preservation Loan Service Programs will be automatically considered if they are determined not eligible for Primary Loan Service. The borrower can withdraw the application by completing Attachment 1 of Exhibit K. The rule is amended to incorporate these additions, along with minor changes in language to ensure that the Preservation Loan Servicing



consideration will occur before voluntary conveyance, acceleration, liquidation, or foreclosure.

#### **PART 1955—PROPERTY MANAGEMENT**

##### **Subpart A—Liquidation for Loans Secured by Real Estate and Acquisition**

This subpart delegates authority and prescribes procedures for the liquidation of FmHA loans and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the Government's redemption rights, and certain other actions which result in acquisition of the property by the Government.

*Section 1955.3—Definitions.* The Agency proposed to add to this section the definition of Dwelling Retention. No comments were received on this section. The Agency, however, will replace the term "Dwelling Retention" with the term "Homestead Protection" in order to be consistent with the term used in the Agricultural Credit Act of 1987. The definition is adopted as proposed except the term "Homestead Protection" replaces "Dwelling Retention."

*Section 1955.10—Voluntary conveyance of real property by the borrower to the Government.* The Agency proposed to delete reference to Forms FmHA 1924-25 and 1924-26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter. The Agency also proposed to set forth specific guidelines for voluntary conveyance and payment of liens in accordance with § 1955.67 of Subpart B of this part.

While no comments were received specific to the proposed revision, several comments were received related to this section. One respondent commented that this section pertained only to Farmer Program loans made to an individual and should include Farmer Programs loans made to cooperative, partnership, joint operations and cooperatives. No revisions were made related to the comment because this matter is covered in the definition of "Loans to Individuals." The definition states that it includes those Farmer Program loans made to individuals or entities. One comment was received suggesting that Farmer Programs borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter should be considered for Primary and Preservation Loan Service Programs. This comment was adopted and the regulations amended to provide that when it is determined that all conditions of Subpart L of Part 1951 of this chapter

have been met, loans for unauthorized assistance will be treated as authorized loans and Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent prior to acceptance of a voluntary conveyance.

One comment was received suggesting that reference in § 1955.10(d)(8) to proposed Exhibits 3, 3A and 4 of Subpart S of Part 1951 of this chapter should be deleted because of legal reasons. Subpart S of Part 1951 of this chapter has been revised deleting the proposed Exhibits 3, 3A and 4. Proposed Exhibits 5 and 6 of Subpart S of Part 1951 of this chapter have been redesignated as Exhibits 3 and 4, respectively.

One comment was received suggesting that FmHA, rather than the Office of the General Counsel, be authorized to accept less than full payments on accelerated Rural Housing (RH) Loans. This comment was not adopted because it was determined that the Office of General Counsel should recommend the necessary action on those cases referred to their office for legal action. The proposed rule is adopted in the interim final.

The Agency had administratively adopted Exhibit G, "Worksheet for Determining the Recovery Value of Farmer Program Real Estate Value," (available in any FmHA office) referred to in this section in the interim rule notice that will provide guidance to the County Supervisor in determining if it is in the Government's financial interest to accept a voluntary conveyance of real estate. This worksheet is also to be completed when determining the Government's bid at any real property foreclosure sale, and in determining if the Government will exercise its redemption rights on foreclosed property.

*Section 1955.15—Foreclosure by the Government of loans secured by real estate.* The Agency proposed to delete references to Forms FmHA 1924-14, 1924-25 and 1924-26, and to substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter. Section 1955.15 was also revised to clarify the handling of SFH loans, and to provide guidance for handling offers made by a borrower after acceleration. A comment was received suggesting that this section be revised to clearly indicate that a borrower who is indebted for both Single Family Housing and Farmer Program loans, would retain all rights to servicing procedures under both programs. No changes were made to this section because it was determined that this matter was adequately covered

under the respective loan servicing regulations.

One respondent commented that Exhibit D, "Notice of Acceleration-Farmer Programs Loan Accounts Secured by Real Estate and/or Chattels," referred to in this section, be revised to advise the borrower that the remaining debt may be satisfied by debt settlement in conjunction with a voluntary conveyance, transfer and assumption or cash sale. This comment has been adopted and Exhibit D has been revised to advise the borrower that satisfaction of the remaining debt may be debt settled in conjunction with a cash sale of the security property, voluntary conveyance of property to FmHA and/or transfer and assumption.

One respondent commented on the provision that provided that if the borrower brings the account current after acceleration and later becomes delinquent again, the borrower will not have an opportunity to correct the default except by satisfying the debt in full. The respondent suggested that the concept of acceleration means the entire debt is due within the 30 days after the acceleration notice and if the borrower pays this amount, there is no longer any debt owed to FmHA on which the borrower could later become delinquent. The Agency agrees with the respondent that this provision is misleading and has determined that the borrower will have ample notice of FmHA's intended actions to accelerate and adequate opportunity to resolve the delinquency prior to the acceleration notice. The Agency, however, is aware that individual States may have specific State laws that require the acceleration to be terminated if the borrower cures the default. The Agency has reconsidered its proposed rule and has deleted the provision allowing the borrower to bring the account current after acceleration in the interim rule. The interim rule, however, does provide an exception for those States that have laws that specify how the debtor may receive the delinquency after acceleration by payment of less than the debt in full.

One respondent commented that after an account is accelerated, loan servicing ceases and that it was incumbent on the Agency to do everything possible to assist the borrower to continue to operate. This comment was not adopted because the Agency has determined, once an account has been accelerated, that Primary Loan Servicing Programs will not assist in the orderly collection of debt and that acceleration of the account is necessary to protect the Government's interest. The Agency has,



however, implemented that provision of the Agricultural Credit Act of 1987 which provides an opportunity for borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987, to apply for the release of income from the sale of chattel security and debt servicing relief. A few borrowers have requested release of income from the sale of chattel security and Loan Servicing Programs.

Several comments were received objecting to the provision that the denial of an offer to stop foreclosure is not appealable because it violated provisions of the Food Security Act of 1985, which requires that decisions that directly and adversely affect a borrower be appealable. No change has been made in this provision because the Agency has determined that the borrower has been given an opportunity to appeal FmHA's foreclosure action when the borrower was advised of FmHA's intent to accelerate the loan indebtedness. The Agency adopts the proposed rule.

Several respondents commented on the proposed regulation addressing the use of Supervised Bank Accounts to hold payments made on loan accounts that have been accelerated, and that Supervised Bank Accounts should be interest bearing. The Agency has considered those comments and has elected not to adopt this comment because of the differences in State Laws which may, in some cases, require the acceleration to be reversed. We have however, revised this section to clarify that payments will be accepted after acceleration and applied on the loan account unless State Laws would require the acceleration to be reversed. In those States where acceptance of payments after acceleration would cause the acceleration to be reversed, the payments will not be accepted. In addition, each State is required to address in a State supplement the provisions of State laws regarding the acceptance of payments after acceleration. In those States where accepting the payment after acceleration does not cause the acceleration to be reversed, FmHA will accept payments and apply it on the loan indebtedness.

**Section 1955.18—Action required after acquisition of property.** The Agency proposed changes in the section to address how and when the County Supervisor is to notify previous owners and operators of Homestead Protection rights. A respondent commented that this section should clearly state that the Homestead Protection Notice be sent certified mail. This comment has been adopted. One respondent also

commented that the decision to lease or buy the property is the former owner's option, and that any decision by FmHA regarding the availability of the property for sale should not delay sending the notices, thus prohibiting a lease or purchase agreement to be entered into by the former owner within the 180-day period after FmHA acquires the property. We have revised this section to clarify that the leaseback/buyback notices will be sent after FmHA acquires the property and that the County Supervisor will initially attempt to dispose of property in accordance with the leaseback/buyback program. Appropriate changes and revisions have also been made to § 1951.911(a) of Subpart S of Part 1951 of this chapter, "Leaseback/Buyback." Section 1951.911(a) allows the former owner the option to lease or purchase the property. This section also advises the County Supervisor to notify the former owner of leaseback/buyback rights within 30 days of FmHA acquisition of the property.

It also provides for 180 days or a longer period of applicable State Redemption laws provide for a longer timeframe to make application in writing. The 180 day timeframe in which the former owner must enter into a lease or purchase agreement has been removed. There were other respondents who requested minor changes to Subpart A of Part 1955 as to grammar and clarification of phrases which the Agency has adopted and has amended this subpart to reflect these changes, otherwise the proposed rule is adopted as proposed.

#### PART 1955—PROPERTY MANAGEMENT

##### Subpart B—Management of Property

This subpart prescribes the policy and procedures for the management of real and chattel property which is in FmHA inventory. This subpart along with Subpart C of Part 1955 contained the policy and procedures for FmHA's Leaseback/Buyback and Homestead Protection Programs as mandated by the Food Security Act of 1985. The Agricultural Credit Act of 1987 revised these programs and they became a part of Preservation Loan Service Programs as outlined in Exhibit I, "Dwelling Retention," and Exhibit J, "Leaseback/Buyback," of proposed rule of Subpart S of Part 1951 of this chapter. In the interim rule of Subpart S of Part 1951 of this chapter, the Agency has deleted proposed Exhibits I and J and has incorporated the policy and procedures for Leaseback/Buyback in § 1951.911(a) of Subpart S of Part 1951 of this chapter

and Homestead Protection (formerly referred to as Dwelling Retention) in § 1951.911(b) of Subpart S of Part 1951 of this chapter.

In addition to the proposed rule published May 23, 1988 (53 FR 18392), as it relates to Farmer Programs loans in this subpart, the Agency published a proposed rule on April 2, 1988 (52 FR 10577), as it relates to FmHA's Housing Programs. The April 2, 1988, proposed rule was adopted as a final rule on July 25, 1988 (53 FR 27819). A number of proposed revisions as it relates to form numbers, reference changes, titled and/or clarity were published in both proposed rules. The Agency has adopted those proposed revisions that were duplicated in the April 2, 1988, and May 23, 1988, proposed rules, in the final dated July 25, 1988 (53 FR 27819). No adverse comment were received on the May 23, 1988, proposed rule related to these revisions. Since no adverse comments were received and the revisions have already been published in final rule, no specific mention will be made related to those revisions in this interim rule, and they are not published here. The comments on this Subpart are discussed as they apply to the specific section.

**Section 1955.53—Definitions.** The Agency proposed to revise this section by adding or revising the definition of Indian Reservation, socially disadvantaged individual, and suitable property. Several respondents commented that the revised definition of suitable property for farm property is too restrictive and that the suitability classification of property should not be determined on whether or not FmHA could make a loan on the property. The Agency agrees with the suggestion and has revised its definition of suitable property for farm property to specifically state it is those farmland properties that can be used for general farming purposes. If the County Committee determines that the farmland can be used for farming purposes, it will be classified suitable.

Several respondents also commented on the definition of surplus property as it relates to suitable CONACT property which is not sold within 3 years after acquisition and the concern that such property may not be available for sale as suitable property because it was withheld from market due to an adverse impact on farm real estate values or other administrative reasons. The Agency agrees with these comments and has revised this definition to allow for a period of time greater than 3 years if the property was withheld from the market because its sale may have had an



adverse impact on farm real estate values or other reasons such as statute changes and regulation revisions.

**Section 1955.55—Taking abandoned real or chattel property into inventory and related actions.** The Agency proposed to revise this section to delete reference to Forms FmHA 1924-14, 1924-25 and 1924-26 and substitute reference to Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter. One respondent suggested that this section be revised to clarify that Attachments 1 and 2 of Exhibit A be provided to the borrower before any adverse action which includes requests for voluntary conveyance. The Agency believes this issue is properly addressed in Subpart S of Part 1951 and Subpart A of Part 1955 of this chapter and no change will be made to this section.

**Section 1955.63—Suitability Determination.** The Agency proposed in this section to require the County Committee to determine the suitability of farmland and remove this authority from the County Supervisor. Also, this section was revised to establish guidelines for subdividing properties larger than family farm size. Other proposed revisions were made to this section to correct a reference to FmHA Instruction 2024-A (available in any FmHA office) and to delete the reference to Multiple Family Housing (MFH). One respondent suggested that guidance be provided in reclassifying property as surplus because of physical damage that occurs or changes in economic conditions that affect the suitability for program purposes. The Agency agrees with this recommendation and has revised this section providing several examples of physical damage and changes in economic conditions which will affect the suitability of the property. One respondent commented that this section provides no guidance to the County Committee on reclassifying property presently in FmHA's inventory. No change is being made in this section to address this issue because it is the intention of the agency to implement the reclassification of property presently in inventory by Administrative Notice (AN) (available in any FmHA office). Guidance will be provided by the AN instructing the County Committee to reclassify property presently in inventory in accordance with the suitability definition of this subpart.

One respondent suggested that when FmHA is subdividing farm property which has been determined to be larger than a family farm size, that the Agency divide the property into units for which the value does not exceed \$200,000, the

insured farm ownership loan limit. The Agency had proposed that the value of the subdivided parcel not to exceed \$300,000, the guarantee farm ownership loan limit. We agree with the recommendation and have adopted the \$200,000 value for subdividing property.

One respondent commented that the Agency clarify when FmHA acquires farm property and it is determined to be larger than family farm size, the previous owner has priority to purchase the entire farm. No changes have been made to adopt this revision because this matter is addressed in § 1951.911(a) of Subpart S of Part 1951 of this chapter which provides that it is FmHA policy not to subdivide property larger than family farm size until the previous owner, spouse and children of the previous owner entity members (if the previous owner was an entity) and the previous operator's rights have expired.

**Section 1955.64—Securing, maintaining, and repairing inventory property.** The Agency proposed to revise this section to provide for repairs to nonessential farm buildings or facilities if they are historic or if a health or safety problem exists, to clarify what the County Supervisor's responsibilities are and what FmHA will request of the Soil Conservation Service when dealing with highly erodible soil on farm property. An additional proposed revision was to change the reference from FmHA Instruction 1955-D to FmHA Instruction 2024-A (available in any FmHA office).

No comments were received regarding these revisions and the Agency adopts the proposed rule as amended.

**Section 1955.66—Lease of real property.** The Agency proposed in this section to clarify the leasing of real property, address Homestead Protection and Leaseback/Buyback programs, establish guidance for racial and ethnic considerations, clarify leasing priority, establish procedures for Leaseback/Buyback of property within an Indian Reservation and that the purchase price of inventory property will be the lower of its market value or the capitalization value.

Several respondents commented that the failure to meet all scheduled loan payments in the past should not be a reflection of management skills which may make a prospective lessee ineligible to lease with an option to purchase the farm. The Agency agrees that failure to meet all scheduled loan payments is not an eligibility criteria for Leaseback/Buyback. Management skills is not eligibility criteria, but the County Supervisor must take into consideration the prospective management skills of the

applicant to determine feasibility of the plan and if the terms and conditions of the lease can be fulfilled. Section 1951.911 of Subpart S of Part 1951 of this chapter sets forth the eligibility criteria for applicants that have Leaseback/Buyback rights.

Several comments were received that recommended FmHA enhance its effort to encourage minority participation in FmHA programs as it relates to leasing and purchasing FmHA inventory property. This issue is discussed in part in Subpart A of Part 1943 of this chapter. We have also revised Subpart C of Part 1955 of this chapter to address this issue by targeting suitable property for members of socially disadvantaged groups. Such property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located.

Several respondents commented that the proposed rule suggested that FmHA would transfer property to the Department of Interior only after the Agency determines that the tribe did not have financial resources to purchase the property. We agree with the respondents and have deleted from this section reference to the tribe's financial resources as a condition to transferring property to the Department of Interior.

One respondent commented that entity members of an entity that formerly owned land within the boundaries of an Indian Reservation were excluded in this section from having Leaseback/Buyback rights. The Leaseback/Buyback provisions of § 1951.911(a) of Subpart S of Part 1951 of this chapter provide priority rights to the entity and entity members regardless of whether the property is located within the boundaries of an Indian Reservation. No revisions have been made to this section since this matter is addressed in § 1951.911(a) of Subpart S of Part 1951 of this chapter.

One respondent commented that lands owned by an Indian Tribe and financed by FmHA under the Indian Land Acquisition Loan Program are entitled to Leaseback/Buyback rights and may also be transferred to the Department of Interior if acquired by FmHA. The Agency has determined that the debt write-down authority and Leaseback/Buyback rights provision of the Agricultural Credit Act of 1987 do not pertain to organization type loan borrowers, such as Indian Land Acquisition Loans and Grazing Association Loans; therefore, there is no authority to transfer property which



may be acquired as a result of an Indian Land Acquisition loan to the Department of Interior.

This comment was not adopted and no revisions were made as a result of the comment.

Several respondents commented that FmHA must offer property for sale at the value that reflects the annual production of the land as provided in the Food Security Act of 1985. The Agricultural Credit Act of 1987 provides the property be offered for sale for not less than market value. We agree with the respondent that FmHA must consider the provisions of the Food Security Act in determining the value of farm property. The value that reflects the annual production of the land is determined by FmHA by completing an appraisal based on the prospective capitalization value. FmHA has adopted this recommendation by revising the regulation to reflect that the property will be officially for sale at the lower of the capitalization value or market value.

Several comments were received suggesting that the lease term for Leaseback/Buyback should be longer than one year. We agree with the comments and have revised this section to provide for individuals and entities that have Leaseback/Buyback rights in accordance with § 1951.911 of Subpart S of Part 1951 of this chapter to lease the property for terms from one to five years. The prospective lessee will determine the term of the lease.

Several respondents commented that FmHA should maintain insurance on all inventory property to assure the previous owner will acquire the property in the same condition as when FmHA took it into inventory. FmHA, like the rest of the Federal Government, is a self insurer and it would violate long-standing Federal policy for FmHA to purchase insurance on inventory properties. The FmHA lease, Form FmHA 1955-20, contains a provision acknowledging that FmHA (lessor) does not have insurance on the property.

This comment was not adopted and no revisions were made to this section related to this comment.

#### PART 1955—PROPERTY MANAGEMENT

##### Subpart C—Disposal of Inventory

This subpart delegates authority and prescribes policies and procedures for sale of inventory property including real estate, related real estate rights, and chattels. It also covers the granting of easements and right-of-ways on inventory property.

**Section 1955.102—Policy.** The Agency proposed no revisions to this section,

but did receive a comment that this section be clarified to insure that an eligible applicant has an opportunity to purchase suitable inventory property. The Agency has determined that there is sufficient guidance in other sections of this subpart that clarifies that eligible applicants do have an opportunity to purchase suitable inventory property. The Agency adopts the proposed rule in the interim final rule.

**Section 1955.103—Definitions.** The Agency proposed to revise this section to define CONACT and CONACT property, Homestead Protection, Farmer Program Loans, Leaseback/Buyback owner, previous operator and socially disadvantaged applicant and to redefine suitable property.

One respondent commented on the need for additional clarification for the definitions of "owner," by stating that in cases where the farmer is in a Chapter 11 bankruptcy and the farmer is also the trustee, that the Leaseback/Buyback and Homestead Protection rights are not rights that go to the bankruptcy estate. The Agency does not believe this definition needs clarification and adopts the proposed rule.

One respondent commented that the definition of "previous operator" should include operators who were operating the farm while it was in FmHA's inventory, even though they may have not been the same operator at the time the farm was taken into inventory. The statute requires that the Agency gives special consideration to only those operators that were the immediate previous family-size farm operators of such acquired property. All other operators, even those that might have leased the farm since it came into FmHA inventory, will have an equal opportunity to buy or lease with all other eligible applicants if the farm is not acquired under the leaseback/buyback provisions. The Agency adopts the proposed rule, along with minor changes in language and additions in the interim rule.

One respondent commented that in § 1955.106(a) that a reference should be made to the appropriate FmHA regulations for the definition of "Indian Reservation." The Agency agrees that the change is necessary and has amended this section to include the definition for "Indian Reservation." The Agency adopts this comment in this interim rule.

Several respondents commented on the definition of suitable and surplus property. The Agency's response to these comments is addressed in Subpart B of Part 1955 of this chapter. The Agency agreed with the comments and has adopted the change, along with

minor changes in language and additions in the interim rule.

**Section 1955.105—Real property affected (CONACT).** The Agency proposed to revise this section to reference Leaseback/Buyback and Homestead Protection. No comments were received on this section, but in the interim final rule FmHA has deleted Exhibits I and J of Subpart S of Part 1951 of this chapter and moved them to § 1951.911 of Subpart S of Part 1951 of this chapter.

**Section 1955.105—Real property affected (CONACT).** No comments were received on this section, but in the final rule FmHA has deleted Exhibits I and J of Subpart S of Part 1951 of this chapter.

**Section 1955.106—Disposition of farm property.** The Agency revised this section to provide guidance on the rights of previous owner and notification provided for racial and ethnic considerations and address non-program loans. A comment was received regarding the need for a definition of Indian Reservation, and this has been added to § 1955.103 of this subpart.

**Section 1955.107—Sale of suitable property (CONACT).** The Agency revised this section to provide for advertising of inventory property, address the responsibility of the Indian Tribe council to notify parties eligible for Leaseback/Buyback, establishing the price for inventory property at the market value, delete reference to the capitalization value, clarify preference criteria when two or more eligible applicants wish to purchase the farm and other clarity changes.

Several respondents commented that a reference to Indian Reservation is defined in § 1955.55 of Subpart B of Part 1955 of this chapter which is in error as the definition for Indian Reservation is found in § 1955.53 of that subpart. These respondents suggested that clarification is needed for the nontraditional Indian Reservation definition as these are areas where there are not Indian Reservations but, under the State law, the Indians have the same rights as if there was a reservation. This is particularly true in Oklahoma. The Agency agrees and has adopted the comment in the interim rule for classification.

Several respondents commented that the definition of "price" in § 1955.107(c) should be amended to clarify that for suitable land the price for purchase by family farm operators can be no more than a price that reflects the annual production value of the property as a farming operation. The respondent went on to indicate that the Food Security Act of 1985 contained a prohibition against



selling land at not more than actual production value and this provision was not deleted. Thus, to be in compliance with both the Food Security Act of 1985 and the Agricultural Credit Act of 1987, which allows the offering of suitable land at market value, FmHA must offer the land at the lower of the two values. The Agency agrees and has amended this section to provide for the price of inventory farmland will be either the market or the capitalization value whichever is less.

One respondent commented that § 1955.107(d)(3) should be clarified to insure that an applicant be properly notified if the interest rate changes between the time the loan is approved and the time it is closed. Section 307 (7 U.S.C. 1927a), Loan programs, of the CONACT sets forth the requirements that the applicant must request the lower of the interest rates if the interest rates change between loan approval and loan closing. The Agency adopts this suggestion in the proposed interim rule.

One respondent commented that § 1955.107(d)(5)(i) only allows the use of a quit claim or other forms of nonwarranty deeds. The commentor suggested there is no justification for FmHA not using a warranty deed in credit sale situations. The Agency does not agree. The Anti-Deficiency Act, 31 U.S.C. 1342, prohibits a Government official from entering into a contract or obligation for the payment of money in excess of the amount available in an appropriation. A warranty deed contains covenants which, if breached, could subject the Government to contractual liability many years in the future, i.e., beyond any current appropriation. Due to the Anti-Deficiency Act, the Agency cannot adopt this suggestion.

One respondent commented that § 1955.107(e)(2) states that the County Committee will determine whether the purchaser of farmland inventory will be, as of the time after the contract or lease is entered into, an operator of not larger than a family-size farm. The respondent states that FmHA should define the definition of family-size farms. The Agency believes that the criteria set forth in the regulation provides the necessary guidance to the County Committee for determining if the inventory property is a family-size farm. Therefore, the Agency does not adopt the suggestion.

A respondent commented that the regulations should be revised to remind the County Committee that they must also comply with the priority considerations when there are two or more eligible operators. The respondent also felt that once the 190-day period

has passed the previous operator of the farm had continual priority consideration over other family-size operators. The Agency does not agree that after the 190-day period that the previous operator will continue indefinitely to have priority consideration over other family-size operators. The Agency believes that the statute allows administratively that once this period of time has expired then the other factors regarding priority come into play allowing the County Committee to give priority and make a selection based on those items set forth in § 1955.107(e)(2)(i), (ii) and (iii). The Agency does not accept the suggestion and adopts the proposed rule as published.

One respondent commented that §§ 1955.107(e)(2)(iii) and 1955.108(b)(3) (i) through (iv) which would require the County Committee to take into consideration, when selecting an eligible applicant for suitable farmland property, an evaluation of the operator's past farm records. This would include liquidity, solvency, profitability and efficiency ratios. The respondent felt that this requirement would be in violation of section 621 of the Agricultural Credit Act of 1987 which would require the Agency to conduct a study to show that the use of ratios and standards as part of a loan application would not result in a portfolio of borrowers that is inconsistent with the purposes of the Consolidated Farm and Rural Development Act. The Agency agrees with this comment and has deleted the reference to liquidity, solvency, profitability, and efficiency in the interim final rule.

*Section 1955.108—Sale of surplus property (CONACT).* The Agency revised this section to refer to Exhibit I and J of Subpart S of Part 1951 of this chapter concerning Leaseback/Buyback and Homestead Protection and also addresses that the suitable property will be classified as surplus after 3 years. Exhibits I and J of Subpart S of Part 1951 of this chapter as proposed has been changed from exhibits and the policy and procedures for Leaseback/Buyback can now be found at § 1951.911(a) and Homestead Protection (formerly referred to as Dwelling Retention) of § 1951.911(b) of Subpart S of Part 1951 of this chapter.

One respondent commented that § 1955.108 should be amended to provide for a reference to the type of public advertising that must be done for public sale or auction sale. The respondent suggested there should be a description of the time and period for publishing advertisements in newspapers as well as for posting advertisements. The

Agency agrees and has incorporated this comment in the interim rule to provide for the advertising of surplus properties twice a year for three consecutive weeks.

*Section 1955.122—Method of sale (Chattel).* One respondent commented that this section should clarify that in certain States the original owner of chattel property will be notified of the sale date and method of sale prior to the sales. The Agency agrees and has incorporated this comment in the interim final rule.

*Section 1955.123—Sale procedures (chattel).* This section provides guidance on who is authorized to approve or disapprove credit sales. No comments were received on this section. The proposed rule is adopted.

*Section 1955.128—Appraisers.* One respondent commented that the fee appraisers must include the market value of the property and the value determined by the annual production value. The Agency agrees and has clarified this section in the interim rule to insure that the appraisal reflects both market and capitalization values.

*Section 1955.129—Business brokers.* This section provides guidance on the authority to contract and use business brokers for the sale of businesses, as a whole, including goodwill and chattels. The Agency proposed no revisions to this section and no comments were received. The proposed rule is adopted.

*Section 1955.130—Real estate broker.* This section provides guidance on the authority to contract and use real estate brokers to sell inventory property. The Agency proposed no revisions to this section and no comments were received. The proposed rule is adopted.

*Section 1955.131—Auctioneers.* One respondent suggested that the commission charged by an auctioneer should be considered when calculating the recovery costs for purposes of Primary Loan Service Programs. The method of calculating recovery value is addressed in Exhibit I of Subpart S of Part 1951 of this chapter. The Agency believes this is the proper place for guidance to the field for those items which will be used in calculating recovery value. The Agency adopts the proposed rule.

*Section 1955.134—Loss, damage, or existing defects in inventory real estate property.* One respondent commented that § 1955.134 should be clarified to state that FmHA will maintain sufficient property insurance to insure it against damage to farmland inventory. The Agency believes the present regulations are sufficient as they provide for the reappraisal of the property, if the



property is damaged as a result of fire, vandalism, or an Act of God. The reappraised value of the property will be the amount FmHA accepts from the purchaser. Because of long standing Federal policy applicable to the entire Federal Government, FmHA does not carry property insurance on inventory property. The Agency adopts the proposed rule.

**Section 1955.135—Taxes on inventory real property.** One respondent commented that § 1955.135 should be amended to clarify that during the time FmHA has the land in inventory, it will pay real estate taxes when due. The respondent went on to say that it was very important that taxes be paid because of the need in rural communities for taxes to be paid to cover the expense of the public services provided by property tax dollars. The Agency believes the regulations are sufficient since they require FmHA to pay its proportionate share when the property is sold or when the tax is due. The Agency adopts the proposed rule.

**Section 1955.137—Real property located in special areas or having special characteristics.** The Agency revised this section to correct a reference but received numerous comments on the Agency's policy and procedures regarding floodplains, wetlands, conservation easements, highly erodible farmland and historical preservation. Several respondents commented that deed restrictions the Agency is required to place on inventory properties that have floodplains, wetlands and highly erodible farmland should not be placed on property if it is being purchased by an applicant with leaseback/buyback rights. Property subject to leaseback/buyback is inventory property and as such must be covered by these deed restrictions. The Agency has no legal authority to adopt this comment.

One respondent commented that § 1955.137(c)(3) should be clarified when the sale of inventory property will be delayed when it is necessary to have Soil Conservation Service (SCS) prepare conservation plans on the property prior to meeting the 180 or 190-day time period. The Agency agrees with the comment and the timeframe has been revised to refer only to the period of time the previous borrower/owner must make application. No revisions have been made to this section regarding this comment; however, § 1951.911 of Subpart S of Part 1951 of this chapter has been revised to delete the reference to timeframe as to when a lease or purchase agreement must be entered into. The Agency adopts the rule and

has incorporated the changes, along with other minor revisions in interim final rule.

**Section 1955.138—Property subject to redemption rights.** The Agency proposed no changes to this section but one respondent commented that this section provided for FmHA's resale of inventory property subject to redemption rights if state law permits this. The commentor suggested that this section be amended to clarify that farmland inventory cannot be sold during the redemption period and that Leaseback/buyback rights ran consecutively. The Agency does not adopt this suggestion. The Agency has determined that it was the intent of Congress that the redemption period and Leaseback/Buyback period run concurrently. The Agency adopts the rule as proposed.

**Section 1955.139—Disposition of real property rights.** The Agency received numerous comments on easements, rights-of-way, development rights, restrictions or equivalent thereof on FmHA inventory property. One respondent commented that the Agency should clarify FmHA's affirmative responsibility on the placement of conservation easements. Additional guidance and clarification is added to this section as to the placement of conservation easements upon a farm when FmHA has an affirmative responsibility to do so. No other comments were adopted because the Agency has determined adequate guidance is provided. The Agency adopts the proposed rule as changed.

**Section 1955.140—Scales in parcels.** The Agency proposed no revisions to this section but did receive comments regarding the subdividing of farm inventory property larger than family size which are addressed in Subpart S of Part 1951 and Subpart B of Part 1955 of this chapter. To assure consistence between provisions in Subpart S of Part 1951 and Subpart B of Part 1955 of this chapter and this section, the Agency has revised this section to provide for the County Supervisor, based on recommendations of the County Committee, to subdivide farm properties determined to be larger than family-size. This section has also been revised to provide for the County Supervisor, based on the recommendations of the County Committee, to group two or more individual farm properties into one suitable farm property, along with other minor changes in language and additions in the interim rule.

## PART 1962—PERSONAL PROPERTY

### Subpart A—Servicing and Liquidation of Chattel Security

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of FmHA chattel security, Economic Opportunity (EO) loan property, and note-only loans.

**Section 1962.4—Definitions.** This section has been revised to add the definitions of normal income security and basic security as set forth in section 611 of the Agricultural Credit Act of 1987.

**Section 1962.17—Disposal of chattel security, use of proceeds and release of liens.** This section states the conditions which the borrower must account for all security and provides instructions by which the County Supervisor will release FmHA's liens.

Respondents commented on the proposed regulation that in compliance with the Act, FmHA must release proceeds from the sale of crops, livestock, and livestock products so that the borrower can pay essential family living and farm operating expenses. Essential expenses are defined in § 1962.17. With regard to farm operating expenses there is a provision for machinery repair, farm building, and fence repair, etc. However, respondents stated that the proposed rule contained provisions for capital expenditures. While capital expenditures are not always essential operating expenses, they sometimes are. If a farmer has a critical piece of machinery which breaks beyond repair, it is obviously an essential expense to replace that piece of machinery. To exclude replacement of essential machinery as an essential operating expense is to ignore reality. We agree and are revising § 1962.17 (b)(2)(ii). The State Director will be authorized to approve the replacement of a piece of essential farm machinery which breaks beyond repair.

**Section 1962.17 (b)(2)(i).** One respondent requested that the existing authority to release basic security for essential family living and farm operating expenses not be deleted. Section 611 of the Agricultural Credit Act of 1987 specifically delineates the meaning of both normal income security and basic security and clearly requires that only normal income security shall be released for essential household and farm operating expenses. Therefore, we believe that Congress did not intend that basic security would be released for such purposes. The Agency does not adopt this request.

**Section 1962.17 (b)(2)(ii).** A respondent suggested that Exhibit E to



Subpart A of FmHA Instruction 1962-A, titled "Releasing Security Sales Proceeds and Determining 'Essential' Family Living and Farm Operating Expenses," be published. The Agency agrees and will publish Exhibit E.

*Section 1962.27—Termination or satisfactory chattel security instrument.* One respondent recommended the following addition to the language of § 1962.27(a)(3)(ii) as it relates to FmHA reaffirmation of a Chapter 7 bankruptcy. The following modification to the last sentence should be considered.

(ii) If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation; however, FmHA may refuse to allow the reaffirmation if the borrower has not acted in good faith pursuant to the provision of § 1951.909(a)(2).

The Agency does not agree with this comment. Congress intended the Secretary to take adverse action only in cases of proven fraud, proven waste, or proven conversion. Also, Congress did not intend to limit their intent just to bankruptcy cases.

*Section 1962.34(a)(2).* A respondent suggested that the interest rate charged for the transfer of a loan to an eligible borrower be the lower of the two interest rates at the time of approval or closing. The Agency cannot adopt this suggestion because section 307 (a) of the Consolidated Farm and Rural Development Act requires the borrower to choose the lower interest rate.

*Section 1962.41—Sale of chattel security or EO property by borrowers.* This section sets forth the procedures for voluntary liquidation of security property through public or private sale.

One respondent commented on § 1962.41(f) that this section does not include instructions on how borrowers will be notified of the release of liability. The commentor recommended the use of Form FmHA 1965-8, "Release From Personal Liability," to release the borrower of liability on a sale for less than the FmHA debt. The Agency agrees and has incorporated the change, along with minor changes in language in the interim rule.

*Section 1962.47—Bankruptcy and insolvency.* This section sets forth the conditions which borrowers may apply and enter into agreements for debt servicing before and after a bankruptcy dismissal.

Several respondents commented that FmHA should refuse to allow the reaffirmation of debt of borrowers dismissed in Chapter 7 bankruptcy who have not acted in good faith. The Agency believes that this is not

necessary and prefers that the State Director follow the advice of the Office of General Counsel on how to handle such cases.

Interested parties should also see the Agency's response to comments concerning § 1951.907 of Subpart S of Part 1951 of this Chapter. Paragraphs (c) and (d) have been added to § 1951.907. The additions describe the servicing notices (if any) sent to the attorneys of borrowers who had bankruptcy cases pending on January 6, 1988, the effective date of the Agricultural Credit Act of 1987 and before that date. As provided in the proposed rule at § 1962.47(a)(3) and the same section of this interim rule, for bankruptcies filed after the effective date of the interim rule, FmHA will notify the attorney of these borrowers of the servicing options. The borrower will have the opportunity to apply for servicing if the requirements of this rule are met. One respondent commented that FmHA should begin processing requests for servicing so long as the borrower in bankruptcy has sought relief from the stay, but before the bankruptcy court has signed the order. Based on the comment and advice from regional legal counsel, FmHA has modified §§ 1962.47(a)(3)(i) and 1962.47(a)(3)(ii) to state that servicing negotiations can begin if the borrower provides FmHA with a filed copy of a motion requesting relief from the stay in those jurisdictions where the Office of the General Counsel (OGC) has advised FmHA that the local jurisdiction does not sign orders granting limited relief from the automatic stay. Conforming changes were also made to Exhibit D of this subpart which informs the attorneys of borrowers filing bankruptcy how to apply for servicing.

The Agency has also added changes to §§ 1962.47(c)(3) and 1962.47(c)(4)(i). The change to § 1962.47(c)(3) assures that servicing notices will be sent prior to liquidation as required by the Agricultural Credit Act of 1987. This change is the result of the advice of the Agency's legal counsel.

The change to § 1962.47(c)(4)(i) is also the result of advice from the Agency's legal counsel. Counsel advised that the Agency's previous rule concerning liquidations of Chapter 7 was inefficient. Bankruptcy Law permits a creditor to proceed prior to the discharge if the Government can obtain an agreed order from the borrower and trustee abandoning the property and relief from the stay.

## PART 1965—REAL PROPERTY

### Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

This Subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests and certain note only cases for Farmer Program loans and nonprogram loans.

*Section 1965.11—Preservation of security and protection of liens.* Several respondents commented that the regulations should be revised to clarify that outstanding credit advances also include protective advances. We are revising § 1965.11(c) to read as follows:

(c) Loans may be reamortized without regard to loan limits to include protective advance. The payment of a prior lien is not a protective advance. Refer to paragraph (b) of this section for a list of protective advances. When continuation with reamortization of protective advances is recommended by the County Supervisor, the case file with documentation of all facts justifying the reamortization will be submitted to the State Director for approval.

*Section 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.* This subpart sets forth the conditions for which subordination of loan security property may be granted.

One respondent commented that § 1965.12(a)(8) be changed to allow for a subordination where the prior lien plus the FmHA debt exceeds the current market value under certain conditions. The Agency believes that the proposed rule is adequate. When the FmHA indebtedness is not fully secured by the market value of the security before the transaction a subordination may be granted if the market value of the total security will be increased through improvement or acquisition by an amount at least equal to the additional advance.

Another respondent commented that the proposed rule should be revised to clarify that outstanding credit advances also include protective advances. The Agency has clarified the interim rule to state that the payment of a prior lien is not a protective advance. When continuation with reamortization of protective advances is recommended by the County Supervisor, the case file with documentation will be submitted to the State Director for approval.

*Section 1965.26—Liquidation action.* This section sets forth provisions for sale or transfer of security property when FmHA determines that continued



servicing of the loan will not accomplish the objectives of the loan.

Several respondents commented that § 1965.26(g)(3) be revised to correct the reference to FMI for Form FmHA 1965-8, "Release from Personnel Liability." The Agency has incorporated this change in the final rule for processing the release of liability. Also, § 1965.27(c)(1)(iii) (A), (B), and (C) has been amended by inserting "rates and" in front of the word "term" to clarify what interest rates will be charged in these cases.

*Section 1965.31—Taking liens or real estate as additional security in servicing FmHA loans.* Exhibit A "Memorandum of Understanding" sets forth conditions in which additional liens will not be taken for loans on marginal land used for the production of Softwood Timber loans.

One respondent commented that farm debt restructure and conservation set-aside easements should refer to "the U.S. Fish and Wildlife Service" instead of "the Bureau of Sport Fisheries and Wildlife." The Agency believes the entire Memorandum of Understanding signed in 1967 should be reviewed by FmHA and FWS and these changes be made at that time.

#### List of Subjects

##### 7 CFR Part 1809

Loan programs—Agriculture, Real property—Appraisals, Rural areas.

##### 7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

##### 7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

##### 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

##### 7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

##### 7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

##### 7 CFR Part 1944

Home improvement, Low and moderate housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

##### 7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—agriculture.

##### 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt Restructuring.

##### 7 CFR Part 1955

Foreclosure, Government acquired property, government property management, Sale of government acquired property, Surplus government property.

##### 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

##### 7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

#### PART 1809—APPRAISALS

1. The authority citation for Part 1809 is added to read as follows, and the authority citation for Subpart A is removed.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

##### Subpart A—Appraisal of Farms and Leasehold Interest

2. Section 1809.1 is amended by revising the introductory text and paragraph (b) to read as follows:

##### § 1809.1 General.

This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Land Conservation and Development (LCD) loans, Labor Housing (LH), and Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart.

\* \* \* \* \*

(b) *Appraisal reports.* Form FmHA 422-1, "Appraisal Report (Farm Tract)," Form FmHA 442-3, "Map of Property," and Form FmHA 1922-11, "Appraisal for Mineral Rights," will be used in recording appraisals except as modified by Subpart A of Part 1941, Subparts A and B of Part 1943, and Subpart D of Part 1945 of this chapter, for loans of \$10,000 or less. The forms will be prepared in accordance with Exhibits A, B and G of this subpart (available in any FmHA office). When applicable, Form FmHA 422-2, "Supplemental Report (Irrigation, Drainage, Levee, and Minerals)," will be prepared in conjunction with an appraisal. In no case will Form FmHA 1922-8, "Residential Appraisal Report," be used to appraise a farm under this subpart.

\* \* \* \* \*

3. Section 1809.4 is amended by revising paragraph (b) to read as follows:

##### § 1809.4 The three-way approach to market value.

\* \* \* \* \*

(b) *Capitalization approach.* An accurate estimate of earnings capitalized at an appropriate rate determines the earnings value. This value, generally known as capitalization value, is the amount that a prudent investor likely would pay for the property based on its future earnings and advantages. The capitalization rate to be used in evaluation is most important. The County Supervisor will calculate the capitalization rate from the comparable sales used to complete the appraisal. The formula for calculating the capitalization rate is: Cap rate—Net Income/Selling Price. The following techniques can be used to find the capitalization rate:

##### (1) *Rental income method.*

Capitalization of net rental income will translate farm rental earnings for use of land and buildings into a capitalization rate. This method will reflect one that a typical operator would adopt for the farm considering the development planned on Form FmHA 424-1. The rental income approach must be based on equitable rental terms. Studies of lease terms in each area are important to establish a fairly definite pattern of prevailing rental terms. When farm tenancy in a community is too low to determine typical rental terms, the appraiser can use rental terms for other comparable areas with similar properties in estimating returns for ownership of land and buildings. The rental income method is preferred because rental income is not affected by the operator's management ability.



(2) *Earnings method.* The earnings method is a detailed cash flow analysis of the comparables to determine their net incomes. The net income thereby obtained will reflect the rate of return to the investment in the farm. If the exact annual income can be ascertained from the owner/operator, a more precise capitalization rate can be determined. Several determinations in this manner can provide a good indication of a reliable capitalization rate. The appraiser must use caution that capitalization rates derived in this manner reflect the typical operator and are not influenced by differences in management abilities of the operators.

#### PART 1902—SUPERVISED BANK ACCOUNTS

4. The authority citation for Part 1902 continues to read as follows and the authority citation for Subpart A is removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart A—Loan and Grant Disbursement

5. Section 1902.1 is amended by revising paragraphs (a), (i), (j), and (k) to read as follows:

##### § 1902.1 General.

(a) Forms FmHA 1940-1, "Request for Obligation of Funds," and FmHA 1944-51, "Multiple Family Housing Obligation—Fund Analysis," provide for obligation only, obligation and check request for the full amount of the loan or grant except for MFH, and obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use these forms are contained in the Forms Manual Insert (FMI) for the forms. Instructions for using Form FmHA 1944-51 for obligation and check request via computer terminal may also be found in the "Multiple Family Housing User Procedures." FmHA forms are available in any FmHA office.

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either the borrower, the United States of America acting through the FmHA, and the Financial Institution on Form FmHA 402-1, "Deposit Agreement," or the borrower, FmHA, other lenders, and the Financial Institution on Form FmHA

402-5, "Deposit Agreement (Non-FmHA Funds)."

(j) Form FmHA 402-1 provides for the deposit of funds in a supervised bank account to assume the performance of the borrower's obligation to FmHA in connection with a loan and grant.

(k) Form FmHA 402-5 will be completed when funds advanced by other lenders are deposited in a supervised bank account to assure the performance of the borrower's obligation.

6. Section 1902.2 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2), (a)(4), (a)(5), (a)(6), (b), (e) and the introductory text of paragraph (f) to read as follows:

##### § 1902.2 Policies concerning disbursement of funds.

(a) The Automated Data Processing System (ADPS) will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in rare instances. e.g.:*

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. Those District and County Offices authorized to request checks by the ADPS may request more than one check at a time. If more than one check is required, a Form FmHA 440-57 or Form FmHA 1944-57 will be prepared for each check.

(4) Supervised bank accounts will be used only when needed as defined in paragraph (a)(6) of this section to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA and other lenders when the accounts are no longer required.

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such

property will be deposited in a supervised bank account under Form FmHA 402-1 when the District Director or County Supervisor determines it is needed as defined in paragraph (a)(6) of this section to assure that the funds will be available for replacement of the property.

(6) When it is determined by the County Supervisor and requested or agreed to by the borrower that special supervision is needed in the management of the borrower's financial affairs, funds may be deposited in a supervised bank account. This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his/her financial affairs. Such a period will not exceed one year unless extended by the District Director.

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested through the State Office terminal. Subsequent checks will be ordered as needed through the ADPS system.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," (or Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," for multiple family housing loans) in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402-5, provided:

7. Section 1902.3 is amended by revising paragraph (b)(1) to read as follows:

##### § 1902.3 Procedures to follow in fund disbursement.

(b) \*\*\*

(1) "For Deposit only to Account No. (Number of Construction Account) of (Name of Borrower) in (Name of Financial Institution)."



8. Section 1902.14 is revised to read as follows:

**§ 1902.14 Reconciliation of accounts.**

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable facsimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140-4, "Transmittal of Documents," is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA has a need for the original cancelled check(s) the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s) or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) and will provide this service to the Farmers Home Administration with no fees being assessed the Agency or the Depositor's account for the service.

9. Exhibit B to Subpart A is revised to read as follows:

**Exhibit B to Subpart A—United States Department of Agriculture, Farmers Home Administration—Interest-Bearing Deposit Agreement**

BECAUSE Certain funds of \_\_\_\_\_ referred to as the "Depositor," are now on deposit with the \_\_\_\_\_, referred to as the "Financial Institution," under a Deposit Agreement, dated \_\_\_\_\_, 19\_\_\_\_, providing for supervision by the United States of America, acting through the Farmers Home Administration, referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

BECAUSE certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place

these funds in interest-bearing deposits with the Financial Institution:

THEREFORE, the Depositor and the Government authorize and direct the Financial Institution to place \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

\$\_\_\_\_\_ for a period of \_\_\_\_\_ months at \_\_\_\_\_ % interest.

\$\_\_\_\_\_ for a period of \_\_\_\_\_ months at \_\_\_\_\_ % interest.

\$\_\_\_\_\_ for a period of \_\_\_\_\_ months at \_\_\_\_\_ % interest.

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

UNITED STATES OF AMERICA

By: \_\_\_\_\_

County Supervisor  
Farmers Home Administration  
U.S. Department of Agriculture

(Depositor)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted on the above terms and conditions this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Financial Institution)

(Office or Branch)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibits C and D [Removed]**

10. Exhibits C and D to Subpart A are removed.

**PART 1910—GENERAL**

11. The authority citation for Part 1910 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

12. Sections 1910.1 through 1910.11 are revised, §§ 1910.12 through 1910.49 are added and reserved, and § 1910.50 is added, and Exhibits A, B and C are added to Subpart A. As revised, Subpart A reads as follows:

**Subpart A—Receiving and Processing Applications**

Sec.

1910.1 General.

1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

1910.3 Receiving applications.

1910.4 Processing applications.

1910.5 Evaluating applications.

1910.6 Notification of applicant.

1910.7 Counseling.

1910.8 Reaching an understanding.

1910.9 Supplemental material to be provided by State Offices.

1910.10 Preference.

1910.11 Special requirements.

1910.12 through 1910.49 [Reserved]

1910.50 OMB control number.

**Exhibits to Subpart A**

Exhibit A—Letter for Information Needed for a Completed Farmer Program Application

Exhibit B—Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland

Exhibit C—Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Program Loans.

**Subpart A—Receiving and Processing Applications**

**§ 1910.1 General.**

This subpart prescribes the policies and procedures for receiving and processing Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Labor Housing (LH) and insured sections 502 and 504 Rural Housing (RH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and appropriate FmHA program regulations.

(b) Wherever the term "applicant" appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

(c) FmHA forms are available in any FmHA office.



### § 1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, natural origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as "ECOA prohibited bases." It is the policy of the Farmers Home Administration that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

### § 1910.3 Receiving applications.

Applications for FmHA assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

(a) All persons applying for FmHA assistance who are not indebted to FmHA must file a written application. All persons wishing to submit an application will be encouraged to do so. No oral or written statement will be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA "prohibited bases." The filing of written applications *will be encouraged* even though funds may not be currently available, since complete applications must be considered in the date order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410-4, "Application for Rural Housing Assistance (NonFarm Tract)," will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410-1, "Application for FmHA Services," will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945-22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95-630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of

the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(4) All individual loan applicants will sign Form FmHA 410-9, "Statement Required by the Privacy Act." A signed copy will remain with the application. No application is complete without a signed Form FmHA 410-9 on file.

(5) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications filed for assistance to finance residential real estate and direct FO loans when the loan is to be secured by a lien on the property. In those cases, FmHA will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(b) Requests by FmHA borrowers for additional assistance will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) RH applicants who have a current Form FmHA 431-3, "Household Financial Statement and Budget," or Form FmHA 410-4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410-4 (if other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410-4):

- (i) Name.
- (ii) Social Security Number.
- (iii) Loan purpose.
- (iv) Planned income for next 12 months.

(v) Date and signature of the applicant.

(3) Farmer program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410-1.

(4) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also

complete Form FmHA 1945-22 in addition to the other required forms.

(c) County Office employees will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear to the applicant what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated and signed, and will give whatever assistance is necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination of surnames. Married persons may apply as individuals. In the case of a joint application for other than a farmer program loan, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as "co-applicant." For farmer program loans, there will be only one applicant. If a husband and wife insist on applying as co-applicants for a farmer program loan and the farming operation is a sole proprietorship, they will be considered a joint operation type entity as set out in FmHA loan making regulations and they both will have to meet the eligibility requirements applicable to the joint operation. County Office employees must explain to husbands and wives that they both do not need to apply for farmer program loans unless they desire to do so or the application is for an entity operation. If they apply together for a loan, it must be explained that they will be considered as a joint operation. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others, including cosigners, as required by program regulations needed to determine eligibility for the requested assistance. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment or the security requirements for the loan request. When a co-signer will be required, the applicant will be requested to identify their choice of co-signer. An applicant will also be required to provide information concerning a co-signer, spouse or former spouse, who will not be a co-signer, or who is not a member of the household, when the applicant is relying on the co-signer, alimony, child support, separate



maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases, information regarding the co-signer's, spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will not be required to sign the note unless the spouse's signature on the note is required to create a security interest or the spouse is a co-applicant. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

(f) If a spouse's signature would be necessary for FmHA to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms "married" and "separated" may be used to designate marital status. "Unmarried" includes single, divorced, or widowed persons.

(g) FmHA may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA Instructions

1905-A and 2006-J which are available in all FmHA offices.

(i) For all loans and grants, the applicant must furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security Number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraph (i)(3) of this section.

(1) The SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA forms.

(2) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA Instruction 2033-A, "Management of County Office Records," (available in any FmHA office).

(3) The borrower's case number for residents of the Pacific Islands will be taxpayer's identification number issued by the Pacific Islands Government.

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs" will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA 440-58, "Estimate of Settlement Costs," will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA 440-59 will be kept in the running record section of the applicant/borrower County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940-41, "Truth in Lending Disclosure Statement," completed using "good-faith" estimates, will be delivered or placed in the mail to the applicant

within 3 business days of receipt of the written application in the County Office.

(1) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of Subpart B of Part 1910 of this chapter (available in any FmHA office) will be collected from the loan applicants before credit reports are ordered, except in the case of section 504 loan applicants and section 502 Rural Housing Loan applicants whose requested loan will likely not exceed \$7,500. It is the policy not to order credit reports for Rural Housing loans of \$7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in § 1910.53(g) of Subpart B of Part 1910 of this chapter.

#### § 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. If a farm is situated in more than one State, County or Parish, the loan will be processed in the State, County or Parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) *Completed RH applications.* Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except an application from a veteran will receive preference as outlined in § 1910.10 of this subpart. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

(1) County Office records.

(2) Form FmHA 410-4.

(3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C is available in any FmHA office).

(4) Personal contacts.

(5) Visits of supervisory personnel to the applicant's residence or business.

(6) Form FmHA 410-8, "Applicant Reference Letter," to inform sources



such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the Form FmHA 410-4.

(i) Form FmHA 410-8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95-630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual, joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410-8, the notification will read as follows:

I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Public Law 95-630 in seeking financial information regarding

(Applicant)

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910-5, "Request for Verification of Employment." This form may be used to verify employment and income.

(8) Form FmHA 1940-20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter.

(9) Information required by § 1910.3 (a) (3) and (4).

(b) *Completed farmer program applications.* Completed applications are those set forth below. All persons requesting an application will be provided Exhibit A of this subpart. Completed applications will be processed in the date order received, except as outlined in § 1910.10 of this subpart. The filing date will be stamped on the front of the Form FmHA 410-1. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed farmer program

application will consist of both applicants and FmHA's responsibilities which are as follows:

#### Borrowers Responsibilities

(1) Completed Form FmHA 410-1, "Application for FmHA Services."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to the farm training and/or experience of the applicant and the individual members of an entity applicant.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may not be provided by the applicant when other financial records are not available.

(6) Up to five years of production history.

(7) A brief narrative describing the proposed operation and indicating the proposed size of the operation.

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431-2, "Farm and Home Plan," or other similar plans of operation acceptable to FmHA.

(10) Applicable items required in Exhibit M of Subpart G of Part 1940 of this chapter including SCS Form CPA-26, "Highly Erodible Land and Wetland Conservation Determination," Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," and Form FmHA 1940-20, as required by Subpart G of Part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a

written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(12) The requirement set forth in § 1910.3(a)(4) of this subpart.

#### FmHA's Responsibilities

(13) The requirement set forth in § 1910.3(a)(3)(i) of this subpart.

(14) Form FmHA 1945-29 (EM loans only).

(15) Credit reports as provided in Subparts B and C of this part.

(16) Form FmHA 410-8 as set out in § 1910.4(a)(6) of this subpart.

(17) Form FmHA 1924-1, "Development Plan," if necessary.

(18) Form FmHA 440-32, "Request for Statement of Debts and Collateral," when applicable.

(19) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusion," or Class I or Class II assessment, whichever is applicable.

(20) Form FmHA 1945-29, "ASCS Verification of Farm Acreage, Production and Benefits," (EM loans only).

(21) Additional information may be obtained and verified by:

(i) County Office records.

(ii) Personal contacts.

(iii) Visits of supervisory personnel to the applicant's operation.

(c) *Incomplete farmer program applications.* Applicants who do not submit necessary information for complete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of Form FmHA 410-1. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(d) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after a completed application for OL, FO, SW, or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924-B-1 (available in any FmHA office) to the applicant telling the applicant about Limited Resource loans.

(e) *Notifying socially disadvantaged applicants/borrowers about the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of FmHA acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers about the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Inventory Farmland," to the applicant(s). Exhibit B will also be presented to all socially



disadvantaged individuals at the time they make their initial contact with FmHA regarding FmHA services. Socially disadvantaged applicants are defined in § 1943.4 of Subpart A of Part 1943 of this chapter.

(f) *Notifying Borrower(s) about Farmer Programs Borrower(s) Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower Exhibit C of this subpart, "Farmer Program Borrower Responsibilities" (available in any FmHA office).

(g) *Determining eligibility.* The County Committee will be used to determine eligibility of completed RH applicants who are also applying for a farmer program loan, or who are already indebted for a farmer program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for a determination of eligibility. The County Committee will certify whether or not the applicant meets the eligibility requirements by use of Form FmHA 440-2, "County Committee Certification or Recommendation." The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions must be made by the loan approval official.

(h) *County Committee actions.* All actions by the committee regarding applicant eligibility will be taken in committee meetings attended by at least two committee members. If the County Committee is unable to reach a decision based on the information available, they may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(i) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a completed application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified in writing of the action taken not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights as provided

in Subpart B of Part 1900 of this chapter. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

(j) *Recording action taken.* The County Committee minutes will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be clearly stated on Form FmHA 440-2. In those cases not involving County Committee action, this information will be recorded in the running case record. In the letter to the applicant, factual justification for the unfavorable decision must be set forth as explained in § 1910.6(b) of this subpart.

(k) *Active applications.* An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a written request within 30 days that further consideration is desired. The letter to the borrower will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

Applications for RH, RRR, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or non farm tracts who derive a major portion of their income from farming, will remain active for 12 months from the date a completed application is received, unless withdrawn or disapproved, or unless the loan is closed. All applications which are withdrawn or rejected will be handled in accordance with § 2033.7 of FmHA Instruction 2033-A (available in any FmHA office). If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter. For those applications which have been approved but have not been funded if the funding was not available at the time the application was filed, and for which the steps outlined in § 1910.6(f) have been taken, the County Supervisor will, during the eleventh month following loan approval, notify the applicant that the application will expire 12 months from the date of loan approval. If the applicant wants the application to remain active, the applicant must

provide the County Office with a written request within 30 days, requesting that the application remain active. The applications retained at the applicant's request will be extended for only one additional 12-month period. Failure of the applicant to respond will cause the application to be withdrawn.

#### § 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, will not be used as a consideration of eligibility (provided the applicant the age of the applicant has reached the legal age of majority in the State, or has had the minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) *Creditworthiness.* When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history:

(1) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or FmHA delinquencies that have been resolved in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Non-payment of a debt due to circumstances beyond the applicant/



borrower's control. However, non-payment of a debt due to circumstances within an applicant/borrower's control may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section. Bankruptcies must never be used as an indication of unacceptable credit history.

(6) Previous FmHA debts settled pursuant to Subpart B of Part 1958 of this chapter and Part 1864 of this chapter (FmHA Instruction 456.1) and debts settled pursuant to Subpart B of Part 1951 of this chapter.

#### § 1910.6 Notification of application.

The time frames established in § 1910.4(i) of this subpart must be met.

(a) *Favorable eligibility decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately and, for Farmer Programs, if the County Supervisor has determined the operation is feasible, will promptly process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original eligibility determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440-2. Proper notification as to action taken will be sent to the applicant.

#### (b) *Unfavorable eligibility decision.*

(1) The County Supervisor will immediately notify the applicant in writing of the unfavorable decision. A statement will be made giving specific reasons and factual basis for the denial. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of unfavorable decisions:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income

is derived from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440-2 will be completed by giving the specific reason(s) for the rejection and the factual basis in the blank space immediately above the space for signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided.

(3) If a decision is to deny an EM, OL, FO, or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing in accordance with the appeal office or court decision. The County Supervisor or the County Committee must take action within 15 days, as set out in § 1900.59(c) of Subpart B of Part 1900 of this chapter.

(c) *Favorable feasibility decision.* If the County Supervisor's decision regarding feasibility is favorable, the County Supervisor will notify the applicant immediately of this decision and will promptly process the loan in accordance with the applicable regulations.

(d) *Unfavorable feasibility decision.* For Farmer Programs loans, when the County Committee has determined the applicant eligible and the County Supervisor is unable to determine that the plan of operation is feasible, the County Supervisor will immediately notify the applicant in writing of his/her unfavorable decision. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The statement in paragraph (b) of this section will also apply to this paragraph.

(e) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(f) *Lack of funds.* Applications received when funds are not available will be processed through approval subject to the availability of funds. Applicants who are ineligible will be so advised, in accordance with paragraph (b)(1) of this section. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will

be notified immediately by letter. This letter will be sent by certified mail, return receipt requested. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in paragraph (b)(1) of this section. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration.

(1) When funds are not available for EM, OL, FO and SW loans within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940-1, "Request for Obligation of Funds," will be executed by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments on Requirements of Certifying Official," of Form FmHA 1940-1, upon execution of the form for all insured and guaranteed farmer program loans:

This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request update eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds.

(2) The loan approval official will ask an applicant for an EM, OL, FO, or SW loan for updated information if more than 90 days has passed since Form FmHA 1940-1 was signed. If there have been any significant changes which would affect eligibility, the County Supervisor will obtain the necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. Examples of significant changes which might have occurred since the original request would be changes in the farming



operation (i.e., hogs to poultry), change in farm units and major changes in financial condition. For the County Supervisor to make this determination, a current financial statement and an updated plan of operation must be prepared. Once the applicant has provided the necessary information, a decision as to eligibility and feasibility, if needed, will be made within 30 days. If after reconsideration, the application is rejected, an unfavorable decision has occurred, and proper notification will be sent as outlined in paragraph (b)(1) of this section.

(g) *Credit report.* If a loan is refused because of information provided by a credit report, the County Supervisor will also:

(1) State the reason as being information received in the credit report and cite the specific information given in the credit report that led to the rejection (e.g., delinquent obligations, tax lien, or judgments).

(2) Provide the name and address of the credit reporting company.

(3) Inform the applicant that a copy of the Credit Report may be obtained from FmHA if requested by the applicant, but that any dispute regarding the accuracy of the information in the credit report must be resolved between the Credit Reporting Company and the applicant.

(h) *Other credit references.* When denial is based on information obtained from a source other than a Credit Reporting Company, the applicant will be advised that denial is based on information from other than a Credit Reporting Company, and that upon written request, the nature of that information will be disclosed.

(i) *Completing title work for insured Farmer Program loans.* When an insured farmer program loan(s) is approved, the following statement will be included as an approval condition under section 41 of Form FmHA 1940-1:

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

#### §1910.7 Counseling.

(a) *Budgets.* When it appears that an RH non-farm applicant has insufficient income, based on the abbreviated budget section of the application form, the County Supervisor should invite the applicant to return to the County Office to complete Form FmHA 431-3. There should be enough income to repay the requested loan, pay other debts, pay planned household and other expenses. Joint completion of the budget by the

applicant and County Supervisor should provide the opportunity for the applicant to fully explain how household income is managed.

(b) *Farm and Home Plan.* When information on the Farm and Home Plan indicates that the applicant has insufficient income to repay the requested loan, pay other debts and provide a reasonable standard of living, alternative plans of farm operation will be considered to attempt to overcome the problem.

(c) *Applicant/Supervisor understanding.* When discussing the reasons for the applicant's failure to qualify, the County Supervisor will:

(1) Be sympathetic.

(2) Try to help the applicant work out the problem.

(3) Give full explanation for the rejection and provide full opportunity for further discussion.

(4) Offer suitable alternative when applicable.

(5) Discuss all FmHA programs that might assist the applicant in achieving the applicant's goals.

#### § 1910.8 Reaching an understanding.

The proper understanding will be obtained with all applications with respect to the basis loan making and servicing policies, their responsibilities, and the benefits that may be expected from FmHA assistance. The applicants should be given adequate time to make all necessary basic decisions. Proper understanding may be reached with applicants through:

(a) *Individual interviews with County Office personnel.* The process of arriving at an understanding will begin on the occasion of the first interview with the applicant. The applicant will be given an attentive and sympathetic hearing with ample time to discuss fully all problems and needs. County Office personnel will explain clearly whether and how these needs may be met through the services of FmHA. If necessary, arrangements will be made for subsequent discussions until the County Supervisor is satisfied the applicant has obtained a proper understanding.

(b) *Applicant interviews with the County Committee.* An applicant requesting an opportunity to appear before the County Committee to discuss any questions relating to the application or the FmHA program will be permitted to do so.

(c) *Group meetings.* An effective method of assisting applicants to obtain a proper understanding of the FmHA program is through group meetings. Effective group meetings can be held with three or more applicants. Through

group meetings applicants get the benefit of explanations given to questions raised by others. Requirements can be presented more impersonally, and generally are more acceptable when applicants know that all borrowers must meet the same requirements. Group participants will be informed that matters of personal or confidential nature will not be discussed publicly, and that any such questions will be answered during individual interviews.

(d) *Items to be discussed.* Before loans are made, County Supervisors will make every effort to see that an understanding is reached with the applicants on the following points as they apply to the type of assistance involved:

- (1) Farm and Home Planning.
- (2) Budgeting.
- (3) Recordkeeping.
- (4) FmHA visits.
- (5) Analysis of income and expenses.
- (6) Supervised bank accounts.
- (7) Planning and performing development work.
- (8) Use of funds.
- (9) Security requirements.
- (10) Care and maintenance of security.
- (11) Accounting for security property.
- (12) Repayment of loans.
- (13) Interest credits and recapture.
- (14) Moratorium.
- (15) Graduating to other credit sources.
- (16) Direct payment to the Finance Office, when applicable.
- (17) Appeal procedure.

#### § 1910.9 Supplemental material to be provided by State Offices.

To further assist County Supervisors receive and process applications, the State Office may supplement this subpart with materials and information adapted to State and local conditions. Examples of the types of information that can be used effectively for the guidance of the County Supervisors are:

(a) Guides and suggestions for holding group meetings of applicants.

(b) Illustrative material for use in explaining the FmHA program to individuals and groups.

(c) Information or State statutes concerning community property or dower and curtesy rights, and how these laws affect loan programs and security requirements.

(d) Outreach material.

#### § 1910.10 Preference.

(a) *Veterans.* (1) Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from



the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces:

- (i) During the period of April 6, 1917, through March 31, 1921;
- (ii) During the period of December 7, 1941, through December 31, 1946;
- (iii) During the period of June 27, 1950, through January 31, 1955, or
- (iv) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(2) Veteran's preference will apply when:

- (i) There is a shortage of funds.
  - (ii) Obligor forms are ready to be submitted to the Finance Office, and
  - (iii) There is more than one application having the same date.
- (3) For Rural Housing applicants, veteran's preference will be extended to the spouses and children of deceased servicemen who died in service during one of the periods listed in paragraph (a)(1) of this section.

(b) *Farmer Program loans.* In addition to the veteran's preference, the preference set out in § 1943.10 of Subpart A of Part 1943 of this chapter applies.

#### § 1910.11 Special requirements.

(a) *Servicemen's Readjustment Act of 1944.* Section 512(a)(D) of the Servicemen's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Veterans Administration (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Veterans Administration Loan Guaranty Officers may, therefore, require VA loan applicants to apply to FmHA for loan assistance.

(b) *Veterans determined ineligible by FmHA.* If the veteran is unable to obtain a loan from FmHA, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by FmHA of the veteran's application and the specific reasons for rejection.

#### §§ 1910.12 through 1910.49 [Reserved]

#### § 1910.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0134.

### Exhibits to Subpart A

#### Exhibit A—Letter for Information Needed for a Complete Farmer Program Application

##### UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration (insert address)

(Date)

Dear \_\_\_\_\_:

Please submit the following information to this office so that your loan request can be further considered:

(1) Completed Form FmHA 410-1, "Application for FmHA Services."

(2) If your application is for a cooperative, corporation, partnership or joint operation, you must submit the following:

(A) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(B) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operation.

(C) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(D) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors of members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief narrative as to your farm training and/or experience and of the individual members of an entity applicant.

(4) Financial records for the past five years. You may submit your income tax records only if you do not have financial records.

(5) Five years of production and expense history.

(6) A brief narrative describing your proposed operation and the proposed size of the operation (New applicants only).

(7) The projected production, income and expenses, and loan repayment plan for the operation, which may be submitted on Form FmHA 431-2, "Farm and Home Plan," or other similar plans of operation which are acceptable to FmHA.

(8) Form SCS CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification," which must be obtained from your local SCS office.

(9) A copy of any lease, contract, agreement, or option entered into by yourself or the entity which may be pertinent to the consideration of the application. When a

written lease is not obtainable, a statement will be required setting forth the terms and conditions of the agreement between you and the landlord.

(10) Form FmHA 440-32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete Form FmHA 440-32 for each of you present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Deliver the form(s) to each of your creditors and insure that they return the completed form to our office.

(11) A legal description of your owned farm, real estate property and/or a copy of your lease, including the legal descriptions of all rented crop land, whichever is applicable.

(12) Form FmHA 1945-22, "Certification of Disaster Losses," (for emergency loan application only).

(13) Written evidence from your present lender (if you are presently farming) or other local lenders (and all lenders of an entity applicant) documenting your inability to obtain other credit, including a guaranteed loan. Copies of the lenders letter must be provided to our office.

(14) Applicant's Reference Letter List—this list may include credit references and these references must show complete address and credit account number when the reference is a credit institution.

FmHA will mail Form FmHA 410-8 letters to the references provided and they must be received back in the office before your application is considered complete.

Or

A credit report fee of \$\_\_\_\_\_ payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

(15) Form FmHA 1910-5, "Request for Verification of Employment." This will be used only if you are relying on off-farm employment to pay part of your expenses.

(16) Form FmHA 1924-1, "Development Plan."

The following FmHA forms are attached for your use in filing a complete application:

- Form FmHA 410-1,
- "Application for FmHA Services."
- Form FmHA 410-9, "Statement Required by the Privacy Act."
- Applicant Reference Letter List
- Form(s) FmHA 410-32,
- "Request for Statement of Debts and Collateral."
- Form(s) FmHA 1910-5,
- "Request for Verification of Employment," (if applicable)
- Form FmHA 431-2, "Farm and Home Plan."



Form FmHA 1945-22, "Certification of Disaster Losses," (for EM applications only)

Form FmHA 1924-1, "Development Plan," (if applicable).

Form FmHA 1940-20, "Request for Environmental Information," (if applicable).

Form SCS CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD 1026, "Highly Erodible Land and Wetland Conservation Certification." (Provided and completed by the Soil Conservation Service (SCS)).

(County Supervisor)

**Exhibit B—Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland**

UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION (Insert address)

Date \_\_\_\_\_

Dear \_\_\_\_\_:

The Farmers Home Administration (FmHA) has authority under the Agricultural Credit Act of 1987 to target direct farm ownership (FO) loan funds and acquired farmland to applicants/borrowers of socially disadvantaged groups. This program provides credit to applicants/borrowers of socially disadvantaged groups, at regular or reduced interest rates, to purchase, improve or enlarge farms. In addition, the program provides that FmHA acquired farmland be made available for sale or lease to applicants/borrowers of socially disadvantaged groups. Socially disadvantaged borrowers with existing direct FO loans may have their accounts deferred and/or reamortized at a reduced interest rate.

If you would like additional information regarding the making of direct FO loans and/or the renting or buying of FmHA acquired farmland targeted to socially disadvantaged groups, you should contact my office.

Sincerely,

County Supervisor.

**Exhibit C—Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Program Loans**

Note: Exhibit C, referenced in this subpart, is available in any FmHA office.

**Subpart B—Credit Reports (Individual)**

13a. Part 1910, Subpart B, § 1910.52 is amended by revising paragraph (b) to read as follows:

**§ 1910.52 General.**

(b) Whenever Exhibit A does not list a contractor for a particular town or area, the local FmHA official should request,

through the State Director, the address of other contractors from the Director, Directives and Administrative Services Division, National Office. If the Director, Directives and Administrative Services Division, informs the State Director that there are no other contractors for that particular area, the local FmHA official should follow the procedures outlined in Exhibit A, CREDIT REPORT CONTRACTS, (a). In the meantime, § 1910.4 (a)(1), (2), (4), (5), (6), (7), (8) and (9) of Subpart A of Part 1910 of this chapter will be followed in obtaining and verifying the applicant's qualifications and credit needs.

13b. In Part 1910, Subpart B, Exhibits A through E are amended by removing footnote 1 in the table of contents, and revising the "Note" to the Exhibits. As revised, Exhibits A through E read as follows:

**Exhibits to Subpart B**

Note: The exhibits referenced in this subpart are available in any FmHA office.

Exhibit A—Credit Report Contractors, Current Prices, and Geographical Coverage

Exhibit B—Request for Factual Data Report

Exhibit C—Factual Data Report on Borrower

Exhibit D—Confidential Report on Computer Form 100

Exhibit E—Confidential Report on Computer Form 2000

**PART 1924—CONSTRUCTION AND REPAIR**

14. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart A—Planning and Performing Construction and Other Development**

15. Section 1924.1 is revised to read as follows:

**§ 1924.1 Purpose.**

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multi-unit (LH) loans and grants, and Rural Housing Site (RHS) loans.

16. Subpart B of Part 1924 and Exhibit A to Subpart B are revised to read as follows:

**Subpart B—Management Advice to Individual Borrowers and Applicants**

Sec.

1924.51 General.

1924.52 through 1924.55 [Reserved]

1924.56 Credit counseling.

1924.57 Planning.

1924.58 Recordkeeping.

1924.59 Supervision.

1924.60 Analysis.

1924.61 Nonfarm enterprises.

1924.62 State supplements.

1924.63 through 1924.70 [Reserved]

1924.71 Delinquent borrowers.

1924.72 [Reserved]

1924.73 Follow-up supervisory actions by

District Directors and State Office staff.

1924.74 through 1924.99 [Reserved]

1924.100 OMB control number.

Exhibit A to Subpart B—Letter to Borrower Regarding Releases of Farm Income to Pay Family Living and Farm Operating Expenses.

**Subpart B—Management Advice to Individual Borrowers and Applicants**

**§ 1924.51 General.**

This subpart sets forth policies for providing management advice to farmer program loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, joint operations, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST) loans, and/or Rural Housing loans for farm service buildings (RHF). This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection-only or a judgment account. This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7 of Subpart A of Part 1965 of this chapter). FmHA forms are available in any FmHA office.

§§ 1924.52 through 1924.55 [Reserved]

**§ 1924.56 Credit counseling.**

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available,



and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant.

#### § 1924.57 Planning.

(a) *Long-Time plans (Form FmHA 431-1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431-2 "Farm and Home Plan," and Form FmHA 1962-1, "Agreement for the use of Proceeds/Release of Chattel Security").* These two forms will cover the production cycle which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431-2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision. FmHA will not require the use of Coordinated Financial Statements.

(1) Form FmHA 1962-1 must be completed once each year and revised as needed in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current Form FmHA 1962-1 in the file of a borrower with loans secured by chattels. Form FmHA 1962-1 should be filled out and signed at the same time as a Form FmHA 431-2 is signed, if a Form FmHA 431-2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431-2 shows the

borrower plans to spend \$10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the Form FmHA 1962-1 should show where the \$10,000 will come from (Example—wheat, 3,000 bushels sold, August, \$10,000, Purchase Equipment.) Form FmHA 431-2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter while any appeal is pending. This may be an interim plan for determining the release of proceeds on Form FmHA 1962-1 for essential family living and farm operating expenses in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Such a plan does not have to meet the requirements of a feasible plan in paragraph (c)(5) of this section.

(v) Who have had payments deferred.

(vi) Who are making major adjustments to their operation.

(vii) Who have limited resource loans.

(viii) Who have FmHA loans secured by crops, livestock, and livestock products marketed in the regular course of business.

(2) If the County Supervisor and the borrower cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431-2 and 1962-1 when a new loan, a subsequent loan, a subordination request, or a transfer and assumption is involved, the request will not be approved and any appeal will be handled in accordance with Subpart B of Part 1900 of this chapter and § 1962.17 (a)(2) of Subpart A of Part 1962 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases for essential family living (see § 1924.57(c)(5)(iv) of this subpart) and farm operating expenses. These decisions will be based on sound judgment supported by the facts surrounding the request for release and fully explained to the borrower. In addition FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and the borrower will sign a

Farm and Home Plan, when applicable, and a Form FmHA 1962-1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the Farm and Home Plan, when applicable, and Form FmHA 1962-1 and will explain that those documents are considered binding by FmHA. Borrowers who do not abide by those documents will be handled under § 1962.18 of Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the form binding.

(3) In certain cases the borrower may not indicate any disagreement with the planned use of proceeds on the Form FmHA 1962-1, but may refuse to sign the form. For these cases, the County Supervisor will sign the form and mail it to the borrower with a cover letter explaining that FmHA considers the document binding unless the borrower disagrees with the planned use of proceeds and wishes to appeal in accordance with Subpart B of Part 1900 of this chapter. Borrowers who do not abide by the document will be handled in accordance with § 1962.18 of Subpart A of Part 1962 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial practices for major crop and livestock enterprises within the county office area, which will be updated annually. The County Supervisor will obtain information necessary to develop key farm management practices from the Cooperative Extension Service (CES), Agricultural Stabilization and Conservation Service (ASCS), local seed and fertilizer dealers, and agricultural magazines and literature. Key management practices which have been agreed to by the borrower and the County Supervisor as needing improvement to correct deficiencies identified in the borrower's operation will be documented in Table D of Form FmHA 431-2. A copy of the plan must be given to the borrower. For those borrowers using other acceptable plans, key farm management and financial practices will be typed on a separate sheet of paper and given to the borrower.

(3) Require applicants, when developing their long-time and annual plans, to take into consideration any



plans developed with the Soil Conservation Service (SCS), the Extension Service (ES), or other available farm management service, which are applicable to the applicant's operation. When such plans are feasible to use, the County Supervisor will document in the file the reasons for not using the plans.

(4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter. Form FmHA 1962-1 must provide for the release of sufficient income to pay essential farm operating and family living expenses.

(5) Determine the feasibility of the Farm and Home Plans. A feasible plan is necessary if a loan is being made or a servicing action is being taken. A feasible plan is not necessary if the only reason for developing the plan is to complete a Form FmHA 1962-1 in accordance with paragraph (b)(1)(iv) of this section. A feasible plan must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows for the planned period. A feasible plan must show that a borrower will at least be able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans made to delinquent borrowers.

(iii) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

(6) Send borrowers with loans secured by chattels 60 to 75 days prior to the expiration date for Form FmHA 1962-1 a letter similar to Exhibit A of this subpart, with Attachment 1. A new Farm and Home Plan, or other similar plans of operation acceptable to FmHA, and a new Form FmHA 1962-1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962-1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with § 1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of

the form, and the date for the follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5-year operating history, the applicant's available production history will be used. This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in § 1945.154(a)(29) of Subpart D of Part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s) yields are less than the County average yield, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, for that particular farm, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agriculture commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. In development of unit prices, the State Director will consult with other agricultural agency representatives and agricultural lenders for the State and local areas before establishing commodity prices. State Directors in adjoining states will consult each other

and will resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use these prices. In addition, the supplement required in this section for commodity prices will also contain the 5-year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). This information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

(3) Form FmHA 1962-1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The Form FmHA 1962-1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962-1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 and § 1962.17(a)(2) of Subpart A of Part 1962 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases which would be average for the borrower for essential family living and farm operating expenses. Those borrowers whose requests are in excess of their average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file and if justified FmHA will approve the release. In addition, FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962-1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give the borrower a copy of the form and will explain that it is considered binding by FmHA. Borrowers who do not abide by the form will be handled under § 1962.18 of



Subpart A of Part 1962 of this chapter. If the borrower does not appeal, the County Supervisor will mail the borrower a copy of the completed form along with a cover letter explaining that FmHA considers the planned releases documented in Form FmHA 1962-1 binding.

#### § 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrowers' farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and are required to maintain a recordkeeping system which provides, as a minimum, a record of cash receipts and expenditures, end of year balance sheets, and an income statement. Borrowers receiving EM loans of \$100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine and document in the running record whether borrowers have selected, established, and are maintaining the required recordkeeping systems. For those borrowers who are unable to maintain a recordkeeping system, the County Supervisor will assist and provide guidance in helping these borrowers to develop, understand and utilize records. Such systems may include the farm record book available through FmHA (Form FmHA 432-1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial recordkeeping or accounting service, which is acceptable to FmHA.

(3) Failure of a borrower to maintain the required records will be cause for FmHA to reject a borrower for further financial assistance. Borrowers can also be denied loan servicing programs if the borrower has been previously advised in writing by the County Supervisor that the borrower is not keeping adequate records.

#### § 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory Methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor or designee to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Exhibit A of Subpart S of Part 1951 of this chapter or who have had their loans reamortized, rescheduled, consolidated, written down and/or deferred. The District Director or designee will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have been indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Exhibit A of Subpart S of Part 1951 of this chapter.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred or had their loans restructured.

(iv) Borrower receiving manual production-type loans.

(v) Other borrowers.

#### § 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost or profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year and help them make sound management decisions.

(7) Determine what servicing actions are needed to develop a feasible plan.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available to the borrower.

(2) Options for types of enterprises available for the operation such as corn vs. soybeans, selling the crop vs. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations in the area.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations in the area.

(7) Debt repayment as compared to money available to pay debts.

(8) Cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431-2 and 1962-1 and in completing Form FmHA 431-2 or similar plans of operation acceptable to FmHA for the next year.



(3) Make a complete entry in the case file running record of the key management problems which were identified and discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results on Form FmHA 1960-12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An annual analysis will be conducted for borrowers:

(1) Who are experiencing financial and/or production management problems.

(2) Who are reorganizing or implementing a major change in operations which has not been completed.

(3) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(4) Whose loans have been restructured in accordance with § 1951.906 of Subpart S of Part 1951 of this chapter.

#### § 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431-4, "Business Analysis-Nonagriculture Enterprise," and FmHA 432-10, "Business and Family Record Book," available at most FmHA offices can be used for these purposes.

#### § 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

#### §§ 1924.63 through 1924.70 [Reserved]

#### § 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report (Status Report of Farmer Program Accounts, 540) of farmer program borrower accounts monthly. Farmer Program accounts that are shown as delinquent will be served in accordance

with Subpart S of Part 1951 of this chapter.

#### § 1924.72 [Reserved]

#### § 1924.73 Follow-up supervisory actions by District Directors and State Office staff.

(a) *Follow-up by the District Directors.* The District Director is responsible for seeing that the County office staff correctly conducts analyses with borrowers listed in § 1924.60(d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each county office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.*

(1) The State Director is responsible for seeing that special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Program chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60(d) of this subpart during each visit to a county office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any, is needed for the District Director and County Supervisor.

(3) The State and District Office should jointly and annually review the progress made in servicing of those borrowers listed in § 1924.60(d) of this subpart.

#### §§ 1924.74 through 1924.99 [Reserved]

#### § 1924.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0061.

#### Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

(Insert Address)

(Date)

Borrower's Name)

(Address)

Dear \_\_\_\_\_:

Pub. L. 100-233 requires the Farmers Home Administration (FmHA) to notify you that

you are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products and other property regularly sold in operating the farm so that you can pay essential family living and farm operating expenses. FmHA must also release ASCS and CCC payments which it holds as security for this purpose. The releases will continue up until the time FmHA accelerates your account.

To provide these releases to you, FmHA regulations require that you fill out Form FmHA 1962-1 to explain what items of FmHA security you intend to sell during this crop year. Please see Attachment 1 of this letter for an explanation of this form. We request that you contact this office within 10 days of when you receive this letter so that we can complete this form and you can receive releases on a timely basis.

Sincerely,

County Supervisor

Once a year, you will be asked to complete a plan (Form FmHA 1962-1) which will document the agreement between you and FmHA as to how proceeds from the sale of chattel property which serves as security for your FmHA loans will be released to you by FmHA. You will also need to list those buyers who you plan to sell your farm products to. This plan will give you and FmHA a clear idea of what income you expect from your operation and how those proceeds will be used. The plan will set forth the amount of money required for paying essential family living and farm operating expenses. You and FmHA must agree on how much money will be released from your crop proceeds. Such releases must be in accordance with FmHA regulations.

If the County Supervisor is unable to agree with and approve your plan for the use of the sales proceeds, you will receive a letter explaining why the County Supervisor is unable to approve your plan and how you may appeal the County Supervisor's decision. While an appeal is pending, FmHA will release sales proceeds to be used to pay essential family living and farm operation expenses.

Once a plan has been agreed on, it is important that you abide by the plan. The plan can always be revised or changed, as circumstances require, provided you and FmHA can agree to the revisions.

Planned sales can be listed by month, by quarter or by whatever period suits your operation the best. The form does not have to be completed to show each individual animal, bushel, bale, etc. The form is a plan: it contains only projections. We expect your projections to be realistic and based on your past experience, but we know that you cannot predict exactly how many bushels per acre you will harvest, exactly how many animals you will wean, etc. We also realize that you cannot predict prices to the penny. Sometimes you will have a buyer for your products who is not listed on the form. All we expect of you is to be as accurate as you can. Later, if the plan needs to be changed, you and the County Supervisor can work together to revise it. Many revisions can be agreed on over the telephone and a trip to the County



Office is not always needed. You are not required to check with FmHA before making a sale just because the price you expected to receive is different from what you had planned to receive. However, a difference in price might require your plan to be revised, so FmHA wants to be told about the difference as soon as possible after the sale is made. you are expected to obtain FmHA approval before making a major change in your operation or before you use sale proceeds in a way different than you agreed to.

If at all possible, you should let FmHA know if you are going to sell to a buyer who is not listed on the form. The attached chart gives certain examples when you must get prior consent from the FmHA and when you may advise FmHA after the sales of your farm products.

#### WHAT TO DO IF YOU WANT TO TAKE ACTIONS THAT ARE DIFFERENT THAN WHAT IS LISTED ON YOUR 1962-1 FORM

Get prior consent	Give notice afterwards
<p>You Must Get FmHA's PRIOR CONSENT if You Want to:</p> <ol style="list-style-type: none"> <li>1) Sell, exchange, consume, or otherwise dispose of property that is not listed on your Form 1962-1;</li> <li>2) Dispose of chattel security in a way not listed in the "HOW" section of your Form 1962-1 (for example, feed corn to livestock instead of selling it;</li> <li>3) Use proceeds in a way not listed in the "USE OF PROCEEDS" section of your Form 1962-1 (for example, use proceeds to buy equipment instead of to pay debt).</li> </ol>	<p>You Can Take Action and Then Give FmHA Notice AFTERWARDS if You Want to:</p> <ol style="list-style-type: none"> <li>4) Dispose of your property at a time that is different than what you listed in the "MONTH" section of your Form 1962-1;</li> <li>5) Sell (or exchange) your property to a person or business that is not listed in the "POTENTIAL PURCHASERS" section of your Form 1962-1;</li> <li>6) Sell, exchange, consume, or otherwise dispose of a quantity of property that is different than what you listed in the "QUANTITY" section of your Form 1962-1;</li> <li>7) Accept a price for your property that is different than what you listed in the "AMOUNT OF PROCEEDS" section of your Form 1962-1.</li> </ol>

#### PART 1941—OPERATING LOANS

17. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

##### Subpart A—Operating Loan Policies, Procedures, and Authorizations

18. Section 1941.1 through 1941.50 are revised, Exhibit C of Subpart A is added, and Exhibit B of Subpart A is removed and reserved to read as follows:

#### Subpart A—Operating Loan Policies, Procedures, and Authorizations

##### § 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporation, partnerships, and joint operations that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4-H, Future Farmers of America, and similar organizations. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of Part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. FmHA forms are available in any FmHA office.

##### § 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4-H clubs, Future Farmers of America, and similar organizations.

##### § 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

##### § 1941.4 Definitions.

As used in this subpart, the following definitions apply:

**Approval official.** A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in Tables available in any FmHA office.

**Borrower.** When a loan is made to an individual, the individual is the borrower. When a loan is made to an

entity, the corporation, cooperative, partnership or joint operation is the borrower.

**Cooperative.** An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

**Corporation.** For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

**Family farm.** A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

**Farm.** A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.



**Feasible plan.** A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of this subpart, for annual production loans or subordinations made to delinquent borrowers; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

**Fish.** Any aquatic gilled animal commonly known as "fish," as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

**Joint operation.** Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

**Limited resources applicant.** An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability,

limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

**Majority interest.** Any individual or combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

**Nonfarm enterprise.** Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

**Partnership.** An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

**Recreation enterprise.** An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

**Related by blood or marriage.** As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

**Rural youth.** A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

**Rural youth projects.** Modest projects initiated, developed, and carried out by rural youths participating in 4-H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

**Security.** Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term "security."

**State or United States.** The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the

Commonwealth of the Northern Mariana Islands.

#### § 1941.5 [Reserved]

#### § 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operator as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

#### §§ 1941.7 through 1941.10 [Reserved]

#### § 1941.11 Applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

#### § 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or



joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of this subpart and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1941.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see § 1941.4 of this subpart.

(b) A cooperative, corporation, partnership, or joint operation must:

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members, stockholders, partners or joint operators who are individuals and not cooperative(s), corporation(s), partnership(s), or joint operation(s).

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1941.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A

of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of the INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s).

(iv) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members, stockholders, partners, or joint operators holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners, or joint operators must own or operate a small or family farm and at least one member, stockholder, partner, or joint operator must operate the farm.

(8) If each member's, partner's, stockholder's, or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and



(iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(5) (i) through (iv) and (vi) of this section.

#### § 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4-H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

#### § 1941.14 Annual production loans to delinquent borrowers.

Delinquent borrowers who otherwise meet the eligibility requirements in § 1941.12 of this subpart, whose accounts have not been accelerated by FmHA, and who cannot be assisted after considering all servicing options in Subpart S of Part 1951 of this chapter, including distressed Farmer Programs loans for softwood timber production in applicable areas, may qualify for annual production loans under this section or subordination under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter, when the conditions in paragraph (a) of this section are met.

(a) Such delinquent borrowers must apply for assistance and must meet all of the following conditions before their loan is approved:

(1) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting all agreements and promises made with and to the FmHA.

(2) The borrower has been unable to pay accounts as scheduled due to:

(i) Reduction in essential income from a non-farm job, e.g., unemployment or under employment of the borrower-operator or spouse, caused by circumstances beyond the borrower's control; or

(ii) Reduction in income caused by illness, injury or death of an individual borrower; or, in the case of an entity borrower, the stockholder, member, joint operator or partner who operates the farm; or

(iii) Reduction in income caused by natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage, which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments could not be met.

(3) The borrower has applied the improvements and key management

practices spelled out in Item D of Form FmHA 431-2, "Farm and Home Plan," or in any other acceptable farm plan of operation.

(4) The borrower has properly maintained chattel and real estate security, and properly accounted for the sale of security, including crops, livestock and livestock production.

(5) A farm plan of operation projecting realistic production, commodity prices, family living expenses, and operating expenses, is developed; the proposed cash flow projection shows that all operating expenses, reasonable family living expenses, and principal and accruing interest on all production loans and supplied credit for the production and marketing cycle can be repaid from the planned income. Borrowers will not be required to show that they can pay any principal or interest on other debts outstanding.

(6) Non-disturbance agreements will be obtained, for the term of the FmHA annual production loan being made, from all creditors to whom the applicant is indebted when repayment of the indebtedness is behind schedule and will remain so at the time the FmHA loan is approved.

(b) Loan funds will be used to pay annual operating and family living expenses only, as further explained in § 1941.33(b) of this subpart.

(c) If the borrower is eligible for assistance under this section, follow the procedures in § 1941.33(b) of this subpart.

(d) If the borrower is not eligible for assistance under this section, the County Supervisor will so inform the borrower in accordance with § 1941.33(c) of this subpart.

(e) Form FmHA 1941-1, "Criteria for Continuing Assistance to Delinquent Borrowers," is used to document the basis for continued assistance. The County Supervisor will date and sign the form and place it in position number three of the case file. At loan closing, or at the time of approval of a subordination, the County Supervisor will advise borrowers, by FmHA Form Letter 1941-A-1, "Advice to Borrower of Financial Condition," of their serious financial condition; the importance of carrying out the plan, as developed, for the production and marketing cycle being financed; and that FmHA is continuing to provide assistance for their operations only on a year-to-year basis. Borrowers will be further advised that their farming operations will be evaluated at the end of the production season and a decision will be made, at that time, whether FmHA will consider assistance for another year to continue their operations. The County Supervisor

will answer any question(s) a borrower has concerning the letter and explain its purpose. FmHA Form Letter 1941-A-1 will be signed and dated by the County Supervisor and the borrower(s) at loan closing or at the time of approval of a subordination. A copy will be given to the borrower, and the original will be retained in the case file to acknowledge the borrower's receipt of the letter.

#### § 1941-15 [Reserved]

#### § 1941.16 Loan purposes.

Except for entity borrowers, 10 percent or \$5,000, whichever is less, of any OL loan will be placed in a non-supervised bank account of the borrower's choosing at loan closing. These funds will be used at the borrower's discretion for family living needs or other purposes agreed upon in the farm plan(s) of operation. Loans may be made for farm, forestry, recreation, and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, poultry, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than \$15,000 in a fiscal year for real estate improvements or repairs. The following determinations must be made before an OL loan is made for real estate improvements:

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.



(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(l) Payment of costs for training farmer program borrowers, particularly limited resource borrowers, in recordkeeping for farming and ranching operations. The loan approval official must determine that the training will meet the objectives of the loan program, assist the borrower in his/her recordkeeping and management responsibilities, and that costs are reasonable.

(m) To plant softwood timber on marginal land which was previously used to produce an agricultural commodity or as pasture.

#### § 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant will exceed \$200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed \$5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and the U.S. Fish and Wildlife Service," for assistance in implementation.

#### § 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.60 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months from the date the loan is closed or when the income from the operation is expected. Individual circumstances may warrant repayment schedules which are longer than 12 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be rescheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. In each case warranting

balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In no case will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

#### § 1941.19 Security.

Security must be adequate to assure repayment of the loan. The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of Subpart A of Part 1910 of this chapter or a pledge of security from someone other than the borrower(s). Generally, a pledge of security is preferable to a cosigner. Loans may be subordinated to another lender in accordance with § 1962.30 of Subpart A of Part 1962 of this chapter when the subordination will help the borrower to accomplish the objectives of the loan.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment, such as hand tools, power lawn mowers, and other items of like type not needed for security purposes.

(3) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(4) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.



(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. When the amount of the loan exceeds the equity in chattel security by more than \$10,000, the best lien obtainable will be taken on real estate having sufficient collateral equity to fully secure the loan(s) being made. Different lien positions on real estate are considered separate and identifiable collateral. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Form FmHA 427-1 (State), "Real Estate Mortgage for \_\_\_\_\_," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Insurance.* See § 1941.88 of Subpart B of this part for insurance requirements.

(e) *Special security requirements.* When OL loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members, stockholders, partners, or joint operators of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer programs insured or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(f) *Income from products and program payments.* Assignments, consents and security interests relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security

interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441-8, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products in which FmHA has a security interest under UCC.

(3) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(5) A security interest on income from products and ASCS incentive and other agricultural program payments.

(g) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods before they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods after they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods became fixtures, unless they execute Form FmHA 440-26, "Consent and Subordination Agreement," or Form FmHA 440-65, "Severance Agreement."

(h) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(i) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner

approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 1905-1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

#### §§ 1941.20–1941.22 [Reserved]

#### § 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of Part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. Law 93-495, the Equal Credit Opportunity Act, FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of Subpart F of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.



**§ 1941.24 [Reserved]****§ 1941.25 Appraisals.**

(a) Real estate appraisals will be completed by an FmHA employee or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on Form FmHA 440-21, "Appraisal of Chattel Property," FmHA 422-1, "Appraisal Report (FARM TRACT)," and FmHA 1922-11, "Appraisal for Mineral Rights," respectively, to determine market value and borrower equity in the following instances:

- (1) A chattel appraisal is required when an initial loan is made and chattels are required for security, and when refinancing chattel debt.
- (2) A real estate appraisal is required when real estate is needed as additional security or for refinancing.

(b) *Appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least one of the following qualifications:

- (1) Certification by a National or State appraisal society.

(2) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meet the criteria for a certification in a National or State appraisal society.

(3) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

**§§ 1941.26-1941.28 [Reserved]****§ 1941.29 Relationship between FmHA loans, insured and guaranteed.**

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A guaranteed OL loan may be made to an insured borrower provided:

- (1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant may not exceed \$400,000 at loan closing.

(2) For entity applicants who qualify as per § 1941.12(b)(4) of this subpart and have outstanding OL loans as individuals, the total insured and/or guaranteed OL principal balance,

including the new loan request by the entity applicant, can never exceed the difference between what the total combination the individual members are entitled to and the total combination of the outstanding principal balance the individual members owe at loan closing. Example: Three brothers each have individual OL loans totaling \$750,000. The maximum amount the brothers, as individuals, are entitled to is \$1,200,000. The maximum loan available to the entity is \$350,000, which is the difference between the \$1,200,000 and the \$750,000.

(3) The insured OL loan security must be separate and identifiable from the guaranteed OL security.

(c) An insured OL loan will be made to refinance a guaranteed OL loan when the following conditions are met:

- (1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the insured OL loan is closed.

(d) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an OL loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE loan and any FO, SW, RL, and/or OL loans will not exceed \$650,000.

**§ 1941.30 Committee certification.**

The County Committee will certify an applicant's eligibility on Form FmHA 440-2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations.

**§ 1941.31 [Reserved]****§ 1941.32 Loan docket processing.**

See Exhibit A of this subpart for the loan docket processing guide.

**§ 1941.33 Loan approval or disapproval.**

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided the total insured operating loan principal balance at loan closing does not exceed \$200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all

pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

- (i) The County Committee has certified the applicant eligible.
- (ii) The Committee certification has been properly completed and signed by at least two members of the Committee.
- (iii) Funds are requested for authorized purposes.
- (iv) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA 431-2 may be used when they provide the necessary information.
- (v) The security is adequate.
- (vi) Necessary supervision is planned, and
- (vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

- (i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained; and

(v) Send a signed copy of Form FmHA 1940-1 to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following actions will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapprovals should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.



## § 1941.34 [Reserved]

## § 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the County Office computer terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940-10. (See FmHA Instruction 102.1, a copy of which may be obtained in any FmHA office.)

(c) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940-10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to

the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

## §§ 1941.36-1941.37 [Reserved]

## § 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this chapter.

## §§ 1941.39-1941.41 [Reserved]

## § 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

## §§ 1941.43-1941.49 [Reserved]

## § 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

## Exhibits to Subpart A

\* \* \* \* \*

## Exhibit B—[Reserved]

## Exhibit C—Controlled Substance

(Note.—Exhibit C referenced in this subpart is available in any FmHA office.)

## Subpart B—Closing Loans Secured by Chattels

19. Section 1941.54 is amended by revising paragraph (b) to read as follows:

## § 1941.54 Promissory note.

\* \* \* \* \*

(b) *Signatures.*—(1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officer will execute the note on behalf of the cooperative or corporation. Any other signatures

needed to assure the required security will be obtained as provided in State supplements.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

20. Section 1941.57 is amended by revising paragraph (a)(1) to read as follows:

## § 1941.57 Security instruments.

\* \* \* \* \*

## (a) \* \* \*

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

\* \* \* \* \*

21. Section 1941.88 is amended by redesignating paragraphs (a) through (d) as (b) through (e), adding new paragraph (a) and revising newly designated paragraph (b) and its title, and paragraph (c) to read as follows:

## § 1941.88 Insurance.

\* \* \* \* \*

(a) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA requires an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" is taken by FmHA, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, but not withstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart



A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment.

(b) *Chattels.* Borrowers will be encouraged to carry insurance on chattel property that serves as security for a loan and on other chattel and real property, in order to protect themselves against losses resulting from accidents, theft and other hazards existing in the area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies and other inventory centrally stored over an extended period of time.

(c) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, applied to debts secured by prior liens, or applied to the OL loan being made.

22. Section 1941.94 is revised to read as follows:

**§ 1941.94 Supervised bank accounts.**

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter.

23. Section 1941.96 is amended by revising paragraph (b) to read as follows:

**§ 1941.96 Changes in use of loan funds.**

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940-17, "Promissory Note," will not be revised nor will a corrected Form FmHA 1941-7, "OL—Other Credit Analysis," be

prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431-2, "Farm and Home Plan," also on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

**PART 1943—FARM OWNERSHIP, SOIL AND WATER RECREATION**

24. The authority citation for Part 1943 is revised to read as follows and the authority citations for the following sections are removed:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

25. Section 1943.1 through 1943.50 are revised and Exhibit B is added to read as follows:

**Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations**

**§ 1943.1 Introduction.**

This subpart contains regulations for making initial and subsequent insured Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers, farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of this subpart for making FP loans to entrymen on unpatented public lands.

**§ 1943.2 Objectives.**

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. FmHA assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

**§ 1943.3 Management assistance.**

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

**§ 1943.4 Definitions.**

As used in this subpart, the following definitions apply:

*Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

*Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

*Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

*Corporation.* For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

*Family farm.* A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.



(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

**Farm.** A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

**Feasible plan.** A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

**Fish farming.** The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

**Joint operation.** Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

**Limited resource applicant.** An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

**Majority interest.** Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

**Market value.** The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

**Mortgage.** Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

**Nonfarm enterprise.** Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

**Partnership.** An entity consisting of individuals who have agreed to operate

a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

**Related by blood or marriage.** As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

**Security.** Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

**Socially disadvantaged applicant.** An applicant/borrower who, because of their identity as a member of a group, has been subjected to racial or ethnic prejudice or cultural bias without regard to their individual qualities.

**State or United States.** The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**Undivided right.** An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

#### § 1943.5 [Reserved]

#### § 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA.



(c) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

**§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.**

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

**§§ 1943.8–1943.9 [Reserved]**

**§ 1943.10 Preference.**

(a) In addition to the preference established in Subpart A of Part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation

designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in achieving FO loan purposes as outlined in § 1943.16 of this subpart. However, this requirement does not prohibit the use of the State's regular allocation of FO funds for loans to applicants who are members of socially disadvantaged groups. (See Exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) Farm Ownership (FO) Loans and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups.")

**§ 1943.11 Receiving and processing applications.**

Applications for FO loans will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

**§ 1943.12 Farm ownership loan eligibility requirements.**

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Applications for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

**(a) An individual must:**

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens

must provide forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records" obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(5) Honestly try to carry out the conditions and terms of the loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

**(b) A cooperative, corporation, partnership, or joint operation must:**

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.



(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporations(s), partnership(s) or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641 "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the past 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(iv) Honestly try to carry out the conditions and terms of the loan. This requirements must be met by the individual members, stockholders, partners or joint operators.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own and operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own and operate the family farm.

(6) If applying as a limited resource applicant, as defined in § 1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own or operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (i) All of the members of the entity are related by blood or marriage, (ii) all of the members are or will operators of the entity, and (iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

#### § 1943.13 Outreach program for applicants/borrowers who are members of socially disadvantaged groups.

The purpose of this section is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Applicants/Borrowers who are members of socially disadvantaged groups.

(a) *Policy.* The FmHA FO Loan and Acquired Property Outreach Program is a concerted effort to:

(1) Make direct FO loan funds and the acquisition of inventory farmland more available to members of socially disadvantaged groups.

(2) Surface and correct problems and obstacles that prevent the participation

of members of socially disadvantaged groups in the FO loan and credit sale programs.

(3) Increase the number of direct FO loans and credit sales made to members of socially disadvantaged groups in targeted and nontargeted areas.

(4) Target direct FO loan funds and acquired properties, as outlined in Exhibit B of this subpart, to ensure participation of members of socially disadvantaged groups in these programs.

(5) Provide pamphlets, publications and general information on the direct FO loan and credit sale programs to members of socially disadvantaged groups.

(6) Provide assistance to members of socially disadvantaged groups to assure that the application process is expedient and complete. Assistance will be provided to borrowers of socially disadvantaged groups through special farm initiatives to assure that sound operating procedures are implemented to enhance the borrower's chances for successfully achieving the objectives of the direct FO loan program.

(b) *Field action.* The State Director shall designate the Farmer Programs Chief to coordinate the Farmers Home Administration (FmHA) Farm Ownership (FO) Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. The State's Civil Rights Coordinator will act as a resource person for this program. The Farmer Programs Chief will:

(1) Maintain close liaison with local, State and national organizations serving social disadvantaged groups to ascertain the reasons for the lack of participation of members of socially disadvantaged groups in FmHA direct FO loan and acquired farmland programs.

(2) Work closely with County Supervisors, District Directors, and National Office officials to remove obstacles and solve problems relating to the making of direct FO loans and credit sales to members of socially disadvantaged groups.

(3) Attend meetings of local, State, and Federal Governments and private organizations concerned with the economic and social development of members of socially disadvantaged groups.

(4) Train members of socially disadvantaged groups, interested individuals and groups involved with socially disadvantaged activities, in the packaging of applications and distribution of materials for use in the direct FO loan and credit sale programs.



(5) Provide pamphlets and publications on the direct FO loan and credit sale program.

(6) Initiate special media outreach activities to inform members of socially disadvantaged groups of the availability of targeted and non-targeted direct FO loan funds and acquired farmland.

(i) Information must be provided to community and farm oriented organizations, agriculture colleges, other USDA agencies and community leaders who are active in the farming area.

(ii) Newspaper articles, radio announcements and public television broadcasts will be used to publicize the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. *State Directors and required to publicize the program at least twice annually in a newspaper most used by members of socially disadvantaged groups.* This effort will be monitored by the National Office through Coordinated Assessment Reviews (CARs) and special planned visits to selected States.

(c) *Reports.* (1) State Directors will keep the Assistant Administrator, Farmer Programs, advised of any problems encountered in carrying out the FmHA Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Members of Socially Disadvantaged Groups which prevent their participation in this program.

(2) *Each State Director will make a semi-annual memorandum report to the Assistant Administrator, Farmer Programs, on May 1 and September 30 of each fiscal year on the Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of Socially Disadvantaged Groups.* The report will summarize accomplishments on the items set forth in § 1943.13(b) of this subpart. The following should also be included in the report:

(i) The State and County of each direct FO loan and credit sale made to applicant/borrowers who are members of socially disadvantaged groups.

(ii) Number of applications for direct initial and subsequent FO loans and credit sales received during the period.

(iii) Number of direct initial and subsequent FO loans and credit sales approved during the period.

(iv) Number of applications on hand for direct initial and subsequent FO loans and credit sales at the end of the reporting periods.

(v) Number of announcements placed in local newspapers, on radio and public television.

(vi) Amount of each initial and subsequent direct FO loans and credit

sales approved during the reporting periods.

(vii) Total dollar value of direct initial and subsequent FO loans and credit sales approved during the reporting periods.

#### § 1943.14-1943.15 [Reserved]

#### § 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm production and management conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all of a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on or in close proximity to, the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants for nonfarm enterprises, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which

will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Construction costs for methane and gas facilities and essential equipment.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water, powerlines, gas lines, and other facilities necessary for the successful operation of the farm may be located outside the land owned, provided that appropriate rights or easements are obtained to ensure that the rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds are advanced is likely to exceed \$1,000, the applicant will assign the payment to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19(b) of this subpart) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited to \$25,000.

(ii) There is adequate security for the loan; and



(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of the loan funds used for improvements on leased land will not exceed \$10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance or guarantee any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland. A major portion of the gross total income must be farm income. The nonfarm enterprise income will be supplemental income.

#### § 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding insured FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed

the lesser of \$200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29 (b) of this subpart is exceeded.

(b) Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. Refer to Subpart LL of Part 2000 of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

#### § 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. A lower rate is established in this Exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4(i) of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicate that installments at the higher

rate, along with other debts, cannot be paid during the period of the plan.

(3) A borrower with limited resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.6 of Subpart B of Part 1924 of this chapter) and at any time a servicing action such as reamortization or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 Subpart A of Part 1951 of this chapter.)

#### § 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate or by real estate and a combination of chattels and/or other security.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real



estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien or real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.2), except as modified by the "Memorandum of Understanding-FHA-FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish on obtaining security when a life estate is involved.

(5) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1) provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security liens will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1941 and Subpart A of Part 1962 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations, or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Security—nonfarm enterprise.* When an FO loan is made just to finance a nonfarm enterprise, even though a majority of the products are used on the farm such as alcohol or methane gas, a lien will be taken on the nonfarm enterprise facility and

sufficient other property to adequately secure the loan. In these situations a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(g) *Special security requirements.* When FO loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) or when FO loans are made to eligible individuals who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an FO loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

#### §§ 1943.20–1943.22 [Reserved]

#### § 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart C of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas,



loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400-4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements including Subpart LL of Part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in

the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Before a loan is closed, applicants must provide evidence that they have received an ATF operating permit.

#### § 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so

the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such a dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(iv) A nonfarm enterprise facility does not have to be physically located on the farm.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in Subpart A of Part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) of this subpart for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and



will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431-4, "Business Analysis—Nonagricultural Enterprise," will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443-17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

(i) Pay costs and taxes connected with the sale;

(ii) Reduce the FmHA debt or any prior lien;

(iii) Make essential capital purchases; or

(iv) Pay essential farm and home expense.

(4) Real estate or an interest in real estate which is non essential to the operation and is retained after loan closing, will not be included in:

(i) The appraisal report.

(ii) The security instrument for the loan.

(iii) The total against the security.

(h) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(j) *Subdivision of large tracts of farmland, other than FmHA inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.

(4) Disposition or omission of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(1) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate will be expected to pay the current rate when able to do so.

#### § 1943.25 Options, planning and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA 440-34, "Option to Purchase Real Property," should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant should decide if the applicant wants the option recorded and



is responsible for paying any recording fees.

(3) Form FmHA 443-2, "Option for Purchase of Farm-Land to be Subdivided" may be used if a large tract will be subdivided into separate farms.

(i) Assignment of the interest of the applicant in whose name the tract is obtained will be made to each applicant who will acquire one of the units.

(ii) Form FmHA 443-3, "Assignment of Interest in Option (Land to be Subdivided)" may be used.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.*

(1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser completing the report must meet at least one of the following qualifications:

(i) Certification by a National or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for Farmer Program loans and will be specifically included as part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value, or if appropriate, the current cash value will be determined.

#### § 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. The provisions of Subpart E of Part 1901 of this chapter will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

#### § 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

#### § 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA-FCA," (available in any FmHA office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as

appraisal methods, title clearances, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

#### § 1943.29 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured FO loans may be made simultaneously with other FmHA loans, and to borrowers presently indebted to FmHA, when the loan limits will not be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan may be made to a borrower with an outstanding guaranteed FO, SW, or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed \$300,000 at loan closing.

(2) For entity applicants who qualify as per § 1943.12(b)(4) of this subpart and have outstanding FO, SW, and RL loans as individuals, the total insured and/or guaranteed FO, SW, and RL principal balance, including the new loan request by the entity applicant, can never exceed the difference between what the total combination the individual members are entitled to and the total combination of the outstanding principal balance the individual members owe at loan closing. Example: Three brothers each have individual FO, SW, and RL loans totaling \$750,000. The maximum amount the brothers, as individuals, are entitled to is \$900,000. The maximum loan available to the entity is \$150,000, which is the difference between the \$900,000 and the \$750,000.

(3) Different lien positions on real estate are considered separate and identifiable collateral.

(4) All other requirements of the loan are met.

(c) New applicants and borrowers indebted to FmHA and/or and FmHA guaranteed lender(s) for an EE loan may be considered for an FO loan(s)



provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any SW, RL OL and FO loans will not exceed \$650,000.

(d) A borrower may use the same collateral to secure two or more loans, insured or guaranteed, under this subpart except that the outstanding

amount of such loans may not exceed the total value of the collateral so used.

#### § 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to

interview the applicant or see the farm before making any recommendations.

#### § 1943.31 [Reserved]

#### § 1943.32 Loan docket processing and forms.

(a) *Forms.* FmHA forms are available in any FmHA office. The following table is a guide on the forms needed and distribution:

FmHA form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	1-0	1-0	1-C
400-3	Notice to Contractors and Applicants	3		1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-0	1-C
400-6	Compliance Statement	3		1-0	1-C
403-1 <sup>1</sup>	Debt Adjustment Agreement	3(5)	1-0	1-0	1-C
410-1	Application for FmHA Services	1(8)	1-0	1-0	1-C
410-8	Applicant Reference Letter	1		1-0	
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-0
410-10	Privacy Act Statement to References	2(10)		1-C	
422-1 <sup>1</sup>	Appraisal Report-Farm Tract	1		1-0	
422-2 <sup>1</sup>	Supplemental Report-Irrigation, Drainage, Levee, and Minerals	1		1-0	
424-1 <sup>1</sup>	Development Plan	2(3)	1-0	1-0	1-C
427-8 <sup>1</sup>	Agreement with Prior Lienholder	3(6)		1-0	1-C
431-1 <sup>1</sup>	Long-Time Farm and Home Plan	2	2-O&C	1-C	1-0
431-2 <sup>1</sup>	Farm and Home Plan	2(2)	1-0	1-0	1-C
431-4 <sup>1</sup>	Business Analysis-Nonagricultural Enterprise	2	1-0	1-C	1-0
1940-1	Request for Obligation of Funds	4(4)	2-O&C(9)	3-O&C	1-0
440-2	County Committee Certification or Recommendation	1		1-0	
440-9 <sup>1</sup>	Supplementary Payment Agreement	2	1-0	1-0	1-C
440-21 <sup>1</sup>	Appraisal of Chattel Property	1		1-0	
440-34 <sup>1</sup>	Option to Purchase Real Property	3(1)	2-O&C	1-0	1-C
440-45	Nondiscrimination Certificate (Individual Housing)	2	1-0	1-0	1-C
1940-21, 1940-22 or Exhibit H, Subpart G, Part 1940.	Environmental Review	1		1-0	
443-12 <sup>2</sup>	Farm Ownership Individual Soil and Water Fund Analysis	3		1-C	
443-17 <sup>1</sup>	Agreement to Sell Nonessential Real Estate	2	2-O&C	1-0	1-C
1940-20 <sup>1</sup>	Request for Environmental Information	2	1-0	1-0	1-0
429-19 <sup>1</sup>	Characteristics of Approved Applicants	3(7)		1-C	
1922-11 <sup>1</sup>	Appraisal For Mineral Rights	1		1-0	
443-8 <sup>1</sup>	Agreement (Between Seller, Purchaser, and Tenant)	4	4	1-C	1-C

O-Original; C-Copy.

<sup>1</sup> When applicable.

<sup>2</sup> Not used when a credit sale is processed without a loan.

#### Notes to Table

- (1) Signed copy of option previously delivered to the seller.
- (2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
- (3) When the Contract Method is used, three copies of plans and specifications will be required.
- (4) An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
- (5) Signed copy to creditor.
- (6) Copy to lienholder.
- (7) Copy to State Director.
- (8) Record of applicant investigation, availability of other credit, and so forth, which remain with the docket.
- (9) Applicant must sign and date this form.
- (10) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.
- (11) When a facility such as an alcohol still or methane plant provides energy and the major portion of such products are used on the farm, the enterprise will not be coded "NFE."

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to Farm and Home Plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor or other County Office

employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under

repayment terms which the applicant can meet.

#### § 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will



not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible.

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee.

(iii) Funds are requested for authorized purposes.

(iv) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA 431-2 may be used when they provide the necessary information.

(v) The security is adequate.

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approving official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official or the reasons will be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal. (See Subpart B of Part 1900 of this chapter.)

(3) Items furnished by the applicant during docket processing will be returned.

#### § 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440-35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder. If land to be acquired will be subdivided the following actions will be taken:

(1) Each assignee will sign Form FmHA 443-10, "Acceptance of Option by Assignee (Land to be Subdivided)."

(2) The buyer will sign Form FmHA 443-11, "Acceptance of Option by Buyer (Land to be Subdivided)."

(3) The originals of the forms will be mailed to the seller and copies retained in the County Office file.

(c) The applicant will arrange with the seller to take possession when land is being acquired. The following forms may be used if appropriate:

(1) Form FmHA 443-5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443-6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443-8, "Agreement (Between Seller, Purchaser, and Tenant)."

#### § 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is

agree upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed \$5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney,



Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940-10, in accordance with FmHA Instruction 102.1 (available in any FmHA office).

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum will be attached to the revised forms and sent to the State Office.

#### §§ 1943.36-1943.37 [Revised]

#### § 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1), except as modified for loans of \$10,000 or less in § 1943.19 (b)(4) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part

1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement" or, when authorized, Form FmHA 440-A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.*

(1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with

Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State Form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 405-1, "Management System Card—Individual," to insure that the proceeds, or the specified portions of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If the co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.



(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. The individual(s) designated by the cooperative or corporation that will operate the farm will sign the note as co-signer(s) and will be personally liable for the debt.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

#### §§ 1943.39-1943.41 [Reserved]

#### § 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter and/or Subpart S of Part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter and/or Subpart S of Part 1951 of this chapter.

#### § 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

#### § 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

#### §§ 1943.45-1943.49 [Reserved]

#### § 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

#### Exhibits to Subpart A

\* \* \* \* \*

#### Exhibit B—Target Participation Rates for Farmers Home Administration (FmHA) Direct Farm Ownership (FO) Loan and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups.

I. *GENERAL:* Provisions of the Agricultural Credit Act of 1987 require Farmers Home Administration (FmHA) to establish target participation rates for providing direct Farm Ownership (FO) loan funds and acquired farmland assistance to members of socially disadvantaged groups. These rates are

established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds and acquired farmland. The target participation rate established for each State, and each County within the State, is based on the proportion of minority rural population to the total rural population in the State, and for each County within the State.

#### II. IMPLEMENTATION

*RESPONSIBILITIES:* States will meet their target participation rates in use of direct FO loan funds and the sale of inventory property.

A. The target participation rate, as provided in this Exhibit, will be applied to direct Farm Ownership loan funds and inventory property in the following manner:

1. The targeted portion of a State's Fiscal Year direct farm ownership allocation, as outlined in Exhibit A of Subpart L of Part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

2. *Inventory property.* States will ensure that members of socially disadvantaged groups have an opportunity to purchase, as a minimum, the number of inventory farms available October 1 of each year x a State's target participation rate. Sales of suitable inventory farmland will be handled in accordance with the applicable provisions of Subpart C of Part 1955 of this chapter. Leasing of inventory property will be handled in accordance with the applicable provisions of Subpart B of Part 1955 of this chapter.

III. *OTHER INFORMATION:* The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds and inventory farmland to counties having the larger socially disadvantaged population.



## TOTAL U.S. PARTICIPATION RATE

State	Target participation rate (percent)
Alabama.....	21
Alaska.....	34
Arizona.....	39
Arkansas.....	13
California.....	20
Colorado.....	11
Connecticut.....	3
Delaware.....	17
Florida.....	14
Georgia.....	20
Hawaii.....	68
Idaho.....	6
Illinois.....	2
Indiana.....	1
Iowa.....	1
Kansas.....	3
Kentucky.....	3
Louisiana.....	25
Maine.....	1
Maryland.....	14
Massachusetts.....	2
Michigan.....	3
Minnesota.....	2
Mississippi.....	37
Missouri.....	2
Montana.....	8
Nebraska.....	2
Nevada.....	12
New Hampshire.....	1
New Jersey.....	8
New Mexico.....	57
New York.....	3
North Carolina.....	21
North Dakota.....	5
Ohio.....	2
Oklahoma.....	12
Oregon.....	5
Pennsylvania.....	2
Rhode Island.....	2
South Carolina.....	34
South Dakota.....	9
Tennessee.....	6
Texas.....	22
Utah.....	7
Vermont.....	1
Virginia.....	2
Washington.....	7
West Virginia.....	3
Wisconsin.....	2
Wyoming.....	7
U.S. Total.....	10

26. Section 1943.51 through 1943.100 are revised to read as follows:

#### Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

##### § 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. See Exhibit A of Subpart A of this Part for making SW loans to entrymen on unpatented public lands.

See Subpart R of Part 2000 of this chapter (available in any FmHA office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA.

##### § 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

##### § 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with Subpart B of Part 1924 of this chapter.

##### § 1943.54 Definitions.

**Approval official.** A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

**Borrower.** When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation cooperative, partnership or joint operation is the borrower.

**Cooperative.** An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

**Corporation.** For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

**Farm.** A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

**Feasible plan.** A feasible plan is a plan based upon the applicant/

borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for the applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

**Fish farming.** The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

**Indefinite parole.** To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I-94, "Immigration on Indefinite Parole" card.

**Joint operation.** Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

**Leasehold.** A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

**Majority interest.** Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

**Mortgage.** Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term



"mortgage" also refers to any security interest in chattel property.

**Partnership.** An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

**Security.** Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

**State or United States.** The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### § 1943.55 [Reserved]

#### § 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA.

(c) Property and interest in property owned and income received by an individual applicant; and cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

#### § § 1943.57-1943.60 [Reserved]

#### § 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

#### § 1943.62 Soil and Water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Public Law 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, has a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) A cooperative, corporation, partnership or joint operation must:

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(2) Honestly try to carry out the conditions and terms of the loan. This requirement also must be met by the individual members, stockholders, partners or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see § 1943.54 of this subpart for the definition of "United States"), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing



on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

(8) If a tenant, has a satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

#### § 1943.63—1943.65 [Reserved]

#### § 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment, such as terracing, land leveling and ditching equipment, provided:

(i) Such equipment is needed and will facilitate the completion of maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(10) Pay the cost of construction of alcohol and methane gas facilities along with essential equipment.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the title price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed \$1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see § 1943.69 (b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to \$25,000.

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated, and



(iii) There is adequate security for the loan.

#### § 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(b) The limitation found in § 1943.79 of this subpart is exceeded.

(c) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Refer to FmHA Instruction 2000-LL of this chapter, "Memorandum of Understanding Between FmHA and U.S. Fish and Wildlife Service," for assistance in implementation.

#### § 1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart S of Part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

#### § 1943.69 Security

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines that the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(D) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(iv) An SW loan is made just to finance construction of an alcohol or methane gas facility, a lien will be taken on the facility and sufficient other property to adequately secure the loan, even though a majority of the products are used on the farm. In these situations, a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1), provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.



(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferrable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over \$100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1962 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights of way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company or OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease.

Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of \_\_\_\_ years beginning on \_\_\_\_, 19\_\_, created and established by a certain Lease dated \_\_\_\_, 19\_\_, executed by \_\_\_\_ as lessor(s), recorded on \_\_\_\_, 19\_\_, in Book \_\_\_\_, page \_\_\_\_ of the \_\_\_\_ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.) This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.



**(g) Special security requirements.**

When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(h) *Same security.* Except as provided in paragraph (g) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

**§ 1943.70—1943.72 [Reserved]****§ 1943.73 General provisions.**

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements. Refer to Subpart LL of Part 2000 of this chapter (available in any FmHA office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

(4) Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their

operations. Before a loan is closed, applicants must also provide evidence that they have received an ATF operating permit.

**§ 1943.74 Special requirements.**

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this Chapter (FmHA) Instruction 426.1) when the loan is secured by real estate.

(2) See § 1943.73 (a) of this subpart for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage



(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

#### § 1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA 440-34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee or contractor authorized to make farm appraisals when real estate is taken as security. The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in

any appraisal work. The contractor/appraiser completing the report must meet at least one of the following qualifications:

(i) Certification by a national or State appraisal society.

(ii) If the contractor is not a certified appraiser and a certified appraiser is not available, the contractor may qualify or may use other qualified appraisers, if the contractor can establish that he/she or that the appraiser meets the criteria for a certification in a national or State appraisal society.

(iii) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security for farmer program loans and will be specifically included as a part of the appraised value of the real estate securing the loans.

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An assignment is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

#### § 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1924, Subpart A of this chapter.

#### § 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

#### § 1943.78 [Reserved]

#### § 1943.79 Relationship with other FmHA loans, insured and guaranteed.

(a) Insured SW loans may be made simultaneously with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) New applicants and borrowers indebted to FmHA and/or an FmHA guaranteed lender(s) for an EE loan may be considered for an SW loan(s) provided their total outstanding principal indebtedness to FmHA and/or the FmHA guaranteed lender(s) for the EE and any FO, RL, OL and SW loans will not exceed \$650,000.

(c) An insured SW loan may be made to a borrower with an outstanding guaranteed FO, SW or RL loan when:

(1) The total insured and guaranteed FO, SW and RL principal balance, including the new loan, owed by the loan applicant does not exceed \$300,000 at loan closing.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) All other requirements of the loan are met.

(d) A borrower may use the same collateral to secure two or more loans made, insured or guaranteed under this



subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

#### § 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form

FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

#### § 1943.81 [Reserved]

#### § 1943.82 Loan docket processing.

(a) *Forms.* FmHA forms are available in any FmHA office. The following table is a guide to the forms needed and shows how they are distributed.

FmHA Form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	1-0	1-0	1-C
400-3	Notice to Contractors and Applicants	3	1-C	1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-0	1-C
400-6	Compliance Statement	3	1-0	1-0	1-C
403-1 <sup>1</sup>	Debt Adjustment Agreement	3(5)	1-0	1-0	1-C
410-1	Application for FmHA Services	1(8)	1-0	1-0	1-C
410-8	Applicant Reference Letter	1	1-0	1-0	1-C
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-0
410-10	Privacy Act Statement to References	2(9)	1-0	1-C	
422-1 <sup>1</sup>	Appraisal Report—Farm Tract	1	1-0	1-0	
422-2 <sup>1</sup>	Supplemental Report—Irrigation, Drainage, Levee, and Minerals	1	1-0	1-0	
422-10 <sup>1</sup>	Appraiser's Worksheet Farm Tracts (Study of Comparable Properties)	1	1-0	1-0	1
424-1 <sup>1</sup>	Development Plan	2(2)	1-0	1-0	1-C
427-8 <sup>1</sup>	Agreement with Prior Lienholder	3(6)	1-0	1-0	1-C
431-1 <sup>1</sup>	Long-Time Farm and Home Plan	2	2-O&C	1-C	1-0
431-2	Farm and Home Plan	2(2)	1-0	1-0	1-C
431-4 <sup>1</sup>	Business Analysis—Nonagricultural Enterprise	2	1-0	1-C	1-0
1940-1	Request for Obligation of Funds	4(4)	2-O&C(8)	1-0	1-C
440-2	County Committee Certification or Recommendation	1	1-0	1-0	
440-9 <sup>1</sup>	Supplementary Payment Agreement	2	1-0	1-0	1-C
440-21 <sup>1</sup>	Appraisal of Chattel Property	1	1-0	1-0	
440-34 <sup>1</sup>	Option to Purchase Real Property	3(1)	2-O&C	1-0	1-C
440-45	Nondiscrimination Certificate (Individual Housing)	2	1-0	1-0	1-C
1940-21	Environmental Review	1	1-0	1-0	
1940-22 or Exhibit H, Subpart G, Part 1940.					
443-12 <sup>2</sup>	Farm Ownership and Individual Soil and Water Fund Analysis	3		1-C	
1940-20 <sup>1</sup>	Request for Environmental Information	2		1-C	
492-19 <sup>1</sup>	Characteristics of Approved Applicants	3(7)	1	1-0	1-C
1922-11 <sup>1</sup>	Appraisal for Mineral Rights	1		1-0	

O—Original; C—Copy.

<sup>1</sup> When applicable.

<sup>2</sup> Not used when a credit sale is processed without a loan.

#### Notes to Table:

(1) Signed copy of option previously delivered to the seller.

(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.

(3) When the Contract Method is used, 3 copies of plans and specifications will be required.

(4) Signed copy to creditor.

(5) Copy to lienholder.

(6) Copy to State Director.

(7) Records of applicant investigation, availability of other credit and so forth, which remain with the docket.

(8) Applicant must sign and date this form.

(9) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veteran's preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information

on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

#### § 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible;

(ii) The County Committee certification has been properly completed and signed by a least two members of the Committee;



(iii) Funds are requested for authorized purposes;

(iv) The proposed loan is based upon a feasible plan or on other plans or documents acceptable to FmHA;

(v) The security is adequate;

(vi) Necessary supervision is planned; and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements; and

(iii) Indicate special conditions or agreements needed with prior lienholders, when appropriate; or

(iv) Indicate that satisfactory title evidence has been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 1940-1 and insert the title of the approval official.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter. The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 1940-1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action. The applicant will be advised of the opportunity to appeal (see Subpart B of Part 1900 of this chapter).

(3) Items furnished by the applicant during docket processing will be returned.

#### § 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA 440-35, "Acceptance of Option," or other suitable forms.

#### § 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the State Office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed \$5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the State Office terminal system. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Subpart A of Part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, (available in any FmHA office). The applicant must agree to a delayed loan closing and the same

will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office and Finance Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office), or if an office is not using CBS, the check will be processed with Form FmHA 1940-10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 194-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.



**§§ 1943.86—1943.87 [Reserved]****§ 1943.88 Loan closing actions.**

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of \$10,000 or less in paragraph § 1943.69(b)(5) of this subpart.

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement," or, when authorized, Form FmHA 440-A25, "Financing Statement."

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.*

(1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 1905-1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives or corporations.* The appropriate authorized officers will execute the note on behalf of the cooperative or corporation. Any other signatures needed to assure the required security will be obtained as provided in State supplements.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as co-signers.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:



- (i) Give the original to the borrower, and
- (ii) Retain one copy to file.
- (3) Title insurance policies:
  - (i) File the Mortgagee title policy in the County Office file, and
  - (ii) Give the owner's title policy, if one is obtained, to the borrower.
- (4) Water stock certificates or similar collateral will be retained in the County Office file.
- (5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents," will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

#### §§ 1943.89-1943.91 [Reserved]

#### § 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A of this subpart, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration, Department of Agriculture," for additional information on these loans.

#### § 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

- (1) All the land which will serve as security for the loan is described on the present real estate mortgage; or
- (2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or
- (3) The required lien priority is obtained with the existing mortgage and future advance clause.

#### § 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

#### §§ 1943.95-1943.99 [Reserved]

#### § 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

#### Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations [Removed and Reserved]

27. Part 1943 is amended to remove Subpart C (consisting of §§ 1943.101 through 1953.150).

#### PART 1944—HOUSING

28. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

#### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

29. Section 1944.23 is revised to read as follows:

#### § 1944.23 Loans to Farm Ownership (FO), Individual Soil and Water (SW), and Recreation (RL) borrowers.

A Section 502 loan may be made to an FO, SW, or RL borrower or simultaneously with an FO loan and a loan from another lender if all conditions of this subpart are met. In these cases, the borrower's current FO, SW, or RL loan may be reamortized in accordance with Subpart S of Part 1951 of this chapter.

#### PART 1945—EMERGENCY

30. The authority citation for Part 1945 is added to read as follows and the authority citations for the Subparts and Sections are removed:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

#### Subpart C—Economic Emergency Loans

31. Section 1945.119 is amended by revising paragraph (a) to read as follows:

#### § 1945.119 Consolidation, rescheduling, reamortization and deferral.

(a) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of the EE loan and

any existing EE loans, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

32. Section 1945.149 is amended by revising paragraph (b) to read as follows:

#### § 1945.149 Additional Loans.

(b) All outstanding notes may be consolidated for EE loans for operating purposes in accordance with Subpart S of Part 1951 of this chapter.

#### Subpart D—Emergency Loan Policies, Procedures and Authorizations

33. Section 1945.168 is amended by revising paragraph (c) to read as follows:

#### § 1945.168 Rates and terms.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart S of Part 1951 of this chapter.

34. Section 1945.169 is amended by revising paragraph (a)(3) to read as follows:

#### § 1945.169 Security requirements.

(a) \*\*\*

(3) When insured and guaranteed loans are involved with the same borrower, there must be separate security for each of the insured and guaranteed loans only when the amount of loans exceeds the total value of the collateral. Different lien positions on real estate are considered separate collateral.

#### PART 1951—SERVICING AND COLLECTIONS

35. The authority citation for Part 1951 is added to read as follows and the authority citations for the Subparts and their Sections are removed:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

#### Subpart A—Account Servicing Policies

36. Section 1951.7 is amended by removing paragraph (f), redesignating paragraphs (g) and (h) as (f) and (g) and revising paragraph (d)(1) to read as follows:



**§ 1951.7 Accounts of borrowers.**

(d) \*\*\*  
 (1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with Subpart S of Part 1951 of this chapter.

37. Section 1951.8 is amended by revising paragraph (a) to read as follows:

**§ 1951.8 Types of payments.**

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17 (d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

38. Section 1951.9 is amended by revising the introductory text to read as follows:

**§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.**

"Distribution" means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431-2, "Farm and Home Plan") and Form FmHA 1962-1, "Agreement for the use of Proceeds/Release of Chattel Security."

39. Section 1951.10 is amended by revising the introductory text to read as follows:

**§ 1951.10 Application of payments on production-type loan accounts.**

Employees receiving payments on OL, EO, SW codes "24," EM for Subtitle B purposes, EE operating-type, and other

production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA 431-2) and Form FmHA 1962-1.

40. Section 1951.25 is amended by revising paragraph (b)(5) to read as follows:

**§ 1951.25 Review of limited resources FO and OL loans.**

(b) \*\*\*  
 (5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

**§§ 1951.33, 1951.40, 1951.41, 1951.44 and 1951.46 [Removed and Reserved]**

41. Sections 1951.33, 1951.40, 1951.41, 1951.44 and 1951.46 are removed and reserved.

**Exhibits C-1 through G-1 [Removed]**

42. Subpart A is amended by removing Exhibits C-1 through G.

**Subpart F—Analyzing Credit Needs and Graduation of Borrowers**

43. Section 1951.262 is amended by revising paragraph (c)(2) to read as follows:

**§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.**

(c) \*\*\*  
 (2) If the District Director and OGC concur with the County Supervisor's decision to take legal action to liquidate the account, the case will be returned to the County Supervisor. The County Supervisor should use the appropriate statement on Exhibit B-2 to Subpart B of Part 1900 of this chapter and use it to notify the borrower of FmHA's intent to accelerate the account and to foreclose for failure to graduate or failure to

provide requested information. Any appeal will be conducted in accordance with the regulations in Subpart B of Part 1900 of this chapter. If the borrower does not appeal the notice of intent to accelerate or if the adverse decision is upheld, the County Supervisor will send the case to the District Director for acceleration of the account in accordance with Subpart A of Part 1955 of this chapter. Exhibit D of Subpart A of Part 1955 of this chapter (available in any FmHA office) will be completed in accordance with the FMI to delete the statement regarding deferrals.

**Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts**

44. Section 1951.314 is amended by revising paragraph (a)(8) to read as follows:

**§ 1951.314 Reamortizations.**

(a) \*\*\*  
 (8) When a decision has been made under Subpart S of this part to reamortize, reschedule or consolidate the farmer program loans of a borrower who also has an RH loan.

**Subpart L—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Farmer Programs**

45. Section 1951.558 is amended by revising paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

**§ 1951.558 Decision on servicing actions.**

(c) \*\*\*  
 (1) \*\*\*  
 (ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter.  
 (iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter.

46. Subpart S (consisting of §§ 1951.901 through 1951.950) of Part 1951 with Exhibits A through Q is added to read as follows:



**Subpart S—Farmer Program Account  
Servicing Policies****Sec.**

- 1951.901 Purpose.
- 1951.902 Policy.
- 1951.903 Authorities and responsibilities.
- 1951.904—1951.905 [Reserved].
- 1951.906 Definitions.
- 1951.907 Notice of Loan Service Programs.
- 1951.908 [Reserved].
- 1951.909 Processing Primary Loan Service Program Requests.
- 1951.910 [Reserved].
- 1951.911 Processing Preservations Loan Service Programs Request.
- 1951.912 Mediation.
- 1951.913 Servicing Net Recovery Buyout Recapture Agreements.
- 1951.914 Servicing of Accounts Restructured Under Primary Loan Service Programs.
- 1951.915 [Reserved].
- 1951.916 Exception authority.
- 1951.917 FmHA Debt Restructuring Support Teams (DRST).
- 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).
- 1951.919—1951.949 [Reserved].
- 1951.950 OMB control number.

**Exhibits to Subpart S**

- Exhibit A—Notice of the Availability of Loan Service Programs for Delinquent Farm Borrowers; Attachments 1–10.
- Exhibit B—Noncash Credit for Farmer Program Loan When Establishing Recapture Receivable.
- Exhibit C—Net Recovery Buy Out Recapture Agreement.
- Exhibit D—Shared Appreciation Agreement.
- Exhibit E—Notification of Request of Mediation or Meeting of Creditors.
- Exhibit F—Notification of Offer to Restructure Debt.
- Exhibit G—Deferral, Reamortization, and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans.
- Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements).
- Exhibit I—Guideline for Determining Adjustments for Net Recovery Value of Collateral.
- Exhibit J—The Debt and Loan Restructuring System (DALRS).
- Exhibit K—Notification of Consideration for Preservation Loan Service Programs.
- Exhibit L—Homestead Protection Program Agreement.
- Exhibit M—Homestead Protection Program Letter.
- Exhibit N—Leaseback/Buyback Agreement.
- Exhibit O—Notice of Availability of Leaseback/Buyback. (. . . Owner . . .)
- Exhibit P—Notice of Availability of Leaseback/Buyback. (. . . Operator . . .)
- Exhibit Q—Waiver of Leaseback/Buyback Rights.

**Subpart S—Farmer Programs Account  
Servicing Policies****§ 1951.901 Purpose.**

This subpart describes the policies and procedures that Farmers Home Administration (FmHA) will use in servicing most Farmer Program loans. The loans include Operating (OL) Loan, Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for Farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in Subparts L and N of this part. For the purposes of Subpart L of this part, when it has been determined that all the conditions outlined in § 1951.558(b) of Subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in Subpart F of this Part. This subpart does not apply to Farmer Program Non-Program (NP) loans. Examples of primary loan service actions that FmHA may take are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments (including softwood timber loans) reducing interest rate on the loan, write-down of debt (including conservation set-aside easements) or a combination of these actions. Examples of preservation loan service actions that FmHA may take are leaseback/buyback and/or homestead protection. Exhibit A provides the Notice of Availability of Primary and Preservation Loan Service Programs for delinquent Farmer Program borrowers. Exhibit B provides a noncash credit for Farmer Program loan(s) when establishing recapture of debt write down. Attachment 1 of Exhibit A is the summary of Primary and Preservation Loan Service Programs. Attachments 2 through 10 are the various notices and response forms borrowers will use after the initial notice is sent. Exhibit C provides for a net recovery buyout recapture agreement. Exhibit D provides for a shared appreciation agreement when debt is written down. Exhibit E provides for notification of borrowers that FmHA will request mediation or a meeting of creditors. Exhibit F provides notification to the borrower that FmHA is offering to restructure. Exhibit G provides policies and procedures for a deferral, reamortization, and reclassification of distressed Farmer Programs (FP) Loans, including Softwood Timber Production (ST) Loans

under this subpart. Exhibit H provides policies and procedures for a Primary Loan Service Program (Farm Debt Restructure and Conservation Set-Aside Easement) under this subpart. Exhibit I provides Net Recovery Value Determinations. Exhibit J provides an explanation of the Debt and Loan Restructuring System (DALRS). Exhibit K provides notification to the borrower that FmHA is considering them for Preservation Loan Service Programs. Exhibit L provides for a Homestead Protection Program Agreement. Exhibit M provides for notification of the Homestead Protection Program to the borrower after the real estate property has been taken into Government inventory. Exhibit N provides for a Leaseback/Buyback Agreement. Exhibit O provides notification to former owner of the availability of Leaseback/Buyback. Exhibit P provides for notification of former operator of the real estate of leaseback/buyback. Exhibit Q provides a waiver of Leaseback/Buyback rights when the former owner/operator is not interested in Leaseback/Buyback.

**§ 1951.902 Policy.**

(a) To have a complete understanding of FmHA's servicing policy, the following policy statement is being published in the regulations. Any Farmer Program borrower may request Primary or Preservation Loan Service Programs. However, borrowers must be unable to pay their debt as scheduled before FmHA will use Primary or Preservation Loan Service Programs. The County Supervisor will use an FmHA computer program (DALRS) to assist in identifying, combining, and documenting the loan service programs that will keep the farmer on the farm and provide the best net recovery to the Government. Servicing is a continuing process, not a single event. It begins the day a farmer comes into the FmHA supervised credit program. Servicing has two objectives:

(1) To help the farmers manage credit so they can return to private sector credit sources, and

(2) To minimize costs to the Government of providing this opportunity to farmers in financial difficulty. Borrowers' accounts must be managed with an overall objective of keeping the farmer in business and at the same time, minimizing loan costs and losses. The tools are rescheduling and/or reamortization, lower interest rates, deferments, and write-down of debt. FmHA can also use Conservation Easement and Softwood Timber Programs where and when applicable.



To establish an effective servicing policy, it is necessary to include the borrower whose loan payments with FmHA are current. This can be called Phase I. FmHA's servicing objective is to keep the borrower in business, paying at regular rates and on regular terms with graduation being the primary objective. The servicing tools available to keep a borrower in Phase I are rescheduling and/or reamortization. These tools must be used before an account gets behind schedule and must be considered before lower interest rates and deferrals. In order for servicing to be effective, all farmer program loans, must be reviewed annually, prior to the date the annual payments are due. This is necessary in order to determine what, if any, servicing action needs to be taken to keep an account from becoming delinquent. However, indiscriminate and careless use of the servicing tools ultimately increases borrower failures and program losses. When it becomes evident that FmHA cannot keep a borrower in business, paying regular rates and after having extended terms to the maximum extent allowable, the borrower is considered to be in Phase II where FmHA has more debt management tools available. These additional tools are lower interest rates and deferrals. The objective is still the same, keep the borrower farming and minimize loan costs and losses to the Government. Depending upon the reasons the borrower entered Phase II, it is reasonable to expect, with proper servicing, along with normal production and marketing conditions, recovery and return to Phase I. However, some borrowers may stay in Phase II as long as they are indebted to FmHA. Here again, servicing should be used to prudently avoid delinquency rather than try to remove it. When it becomes impossible to keep an account from being delinquent and such delinquency exists for 180 days, the borrower is considered in Phase III. The borrower receives the Notice of Availability of Primary and Preservation Loan Service Programs for Delinquent Farmer Program borrowers. This phase begins the complicated process of determining if keeping the farmer on the farm will provide the best net recovery to the Government or whether liquidation offers the best net recovery. FmHA also will automatically consider the Preservation Loan Service Programs in this phase when it is determined that the Primary Loan Service Programs will not keep the farmer on the farm. FmHA's primary servicing tools in this phase include consolidation, rescheduling, reamortization, deferral, softwood

timber loans, conservation easements, and write-down of a borrower's debt. The procedure, at this point, requires an appraisal of all collateral and a sound and accurate determination as to whether or not the best net recovery to the Government exists in write-down of debt and continuation of the farming operation, or in liquidation of the collateral securing the FmHA debt. The debt must be written down to a level at which a feasible plan can be developed. The write-down can go down to an amount that will provide a return to the Government equal to net recovery from an involuntary liquidation. FmHA will continue with the borrower if net recovery from loan payments on the debt after debt write-down equals or exceeds net recovery from liquidation. Once it has been determined that a borrower is not eligible for the Primary Loan Service Programs, every effort must be made to keep the farmer in business, using mediation if necessary and available, in an attempt to get other creditors to restructure their debt if that is what is needed to develop a feasible plan. If it is determined that FmHA cannot restructure the borrower's debt, a Notice of Intent to Accelerate will be sent to the borrower. This Notice will advise the borrower of the right to a meeting with FmHA, an appeal, request an independent appraisal and buy out the FmHA debt at net recovery value. If none of the rights offered in the Notice of Intent to Accelerate provide a favorable solution to the determination that the account cannot be restructured and the borrower does not buy out at net recovery value, FmHA will automatically consider the borrower/owner for the Preservation Loan Service Programs. If the borrower/owner is eligible for the Preservation Loan Service Program, FmHA expects to enter into a contract with the borrower wherein FmHA determines the borrower will receive a leaseback/buyback and/or homestead protection upon conveyance of the real estate and chattels securing the debt. It is expected that the transaction of conveyance from the borrower(s) and reconveyance by FmHA to the borrower(s) take place at one sitting, similar to a loan closing. This means that all documents necessary to complete this transaction must be prepared in advance and be ready for appropriate signature, etc.

(b) When making an adverse decision on the borrower's loan servicing request or before accelerating the loan account, the borrower must be notified of the adverse decision and of the opportunity to appeal. When a borrower's debts cannot be restructured or Preservation

Loan Service Programs cannot be used by the borrower/owner, liquidation is required. FmHA will consider the borrower in Phase IV at this point. Both before and after acceleration the borrower can sell the property for market value or voluntary convey, to FmHA. If FmHA takes the property into inventory, the farmer is now in Phase V and has the opportunity, along with spouse and children to once again be considered for the Preservation Loan Service Programs. The farmer also may elect to use the Homestead Protection Program rather than leaseback/buyback which also can provide a base for farming operations. Leaseback/buyback rights are available in Phase V to spouse and children and family-size operators. Homestead rights are available to only the former owner. In summary, the loan servicing policy is this:

(1) Use rescheduling and/or reamortization at regular interest rates to keep a borrower in Phase I if at all possible. If that is not possible, go to Phase II.

(2) In Phase II, use rescheduling and/or reamortization at limited resource interest rates and consider deferral, including softwood timber loans, if necessary, to keep a borrower from becoming delinquent. When a borrower's loans cannot be restructured using any or all combinations of consolidation, rescheduling, reamortization, deferral, and softwood timber programs where applicable, and with limited resource rates, begin Phase III. The borrower can apply for debt write down and conservation easements before the borrower is 180 days delinquent. Remember that when a loan is 180 days delinquent, FmHA must send Exhibit A with Attachments 1 and 2 of this subpart.

(3) In Phase III, FmHA calculates whether or not the best net recovery to the Government is by keeping the farmer on the farm by using the Primary and Preservation Loan Service Programs or through liquidation. At this point, the borrower is considered for a debt write-down. The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of Primary Loan Service Programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time using a specific discount rate. FmHA will use a discount rate based on the 90-day Treasury bill rate. FmHA will analyze the costs of involuntary liquidation to determine the net recovery value of the collateral



securing the debt as if it was involuntarily acquired and disposed of under the normal FmHA inventory property disposal process. The County Supervisor will determine the current market value of the collateral in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440-21, "Appraisal of Chattel Property." If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral, FmHA will restructure the debt if the borrower accepts the offer within 45 days after written notice. The Phase III process may include mediation if an approved State Mediation Program is available or, when an approved State Mediation Program is not available, an effort must be made by FmHA to get under-secured creditors and the borrower together with a mediator where mediators are available, when the other creditor's debt is the reason a feasible plan cannot be developed. FmHA State Directors will develop a State supplement that outlines how the mediation program for their geographic jurisdiction will be administered. State Directors will work with the Administrator of the Certified State Agricultural Mediation System, farm groups, and the Attorney General's office in those states in which mediation exists in order to develop a reasonable and comprehensive policy on how the federal regulations and the State Mediation Programs will coincide. When an approved State mediation program is not available, FmHA will attempt to get undersecured creditors involved in negotiating a restructuring plan. If trained mediators are available, State Directors may contract with them to facilitate the negotiations of debt adjustment with undersecured creditors. If undersecured creditors agree to restructure debts owed to them, so that the borrower can develop a feasible plan of operation, FmHA will restructure the borrowers debt to FmHA. If undersecured creditors will not participate in negotiations to restructure debts, FmHA will make the determination that a feasible plan of operation cannot be developed and will proceed with appropriate action to liquidate the borrower's accounts after the borrower has the opportunity to appeal the FmHA decision. If a feasible plan cannot be developed, the borrower has the opportunity to retain the security property by paying FmHA the net recovery value. Credit will not be provided by FmHA for this transaction. When all or any combination of these servicing tools show that the best net

recovery to the Government is keeping the farmer on the farm, the debts will be restructured. The borrower cannot pay off FmHA at net recovery value if a feasible plan can be developed with debt restructuring.

(4) When all or any combination of Phase III servicing tools have been fully and carefully considered and it is determined that the best net recovery to the Government is in liquidation, the borrower will be considered in Phase IV which is the liquidation process. If write down will not work, FmHA automatically considers the Preservation Servicing Program application. Before acceleration, FmHA will offer Preservation Loan Service Programs to borrowers. Both before and after acceleration, the borrower can apply for debt settlement when conveying the property, either by sale at market value or voluntary conveyance to FmHA. The normal debt settlement procedures will be followed.

(5) After liquidation, the borrower is considered in Phase V. This last phase is when the property securing the loans passes into FmHA inventory. In this phase, once again, Preservation Loan Service Programs must be offered to the borrower. The objective is to try to keep the farmer on the farm. The borrower/owner's spouse and/or children are now considered in the priority for leaseback/buyback. This will be done with the Leaseback/Buyback Program for the farm or through the Homestead Protection Program for the home and 10 acres. The borrower/owner's spouse and/or children are not eligible for homestead protection. The former borrower/owner or immediate family must meet the eligibility requirements which are set forth in the regulations for leaseback/buyback.

(6) The borrower will have the opportunity to appeal all FmHA adverse decisions.

#### § 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* County Supervisors will make full use of the automated tracking system to track and manage the Farmer Program primary and preservation loan servicing programs.

(b) *Authorities.* All loan servicing decisions will be made by the County Supervisor except write-down of a borrower's debt. County Supervisors are authorized to accept a buyout when the borrower(s) pay the net recovery value of the FmHA security set forth in § 1951.909. Only State Directors are authorized to approve write-down of a borrower's debt. This includes debt written down when buy out at net

recovery value takes place. Write-down of a borrower's debts will be processed in accordance with § 1951.909 of this subpart. County Supervisors are authorized to consolidate and reschedule/reamortize loans one time. If subsequent reschedulings/reamortizations are necessary, approval must be in writing by the District Director.

#### §§ 1951.904-1951.905 [Reserved]

#### § 1951.906 Definitions

As used in this subpart, the following definitions apply:

*Borrower.* An individual or entity which has or is presently operating the farm and has outstanding obligations to the Farmers Home Administration (FmHA) under any Farmer Program loan(s), without regard to whether the loan has been accelerated, but does not include any such debtor all of whose loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers.

*Child.* The son or daughter of a previous owner of property that has been acquired by FmHA and who is of legal age to enter into a binding contract.

*CONTACT or CONTACT property.* Property which collateralized a loan made or insured under the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which collateralized other Farmer Programs loans.

*Delinquent borrower.* A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

*Entity.* A corporation, partnership, joint operation, or cooperative.

*Entity members.* For purposes of leaseback-buyback, entity members are stockholders of a corporation, partners of a partnership, joint operators of a joint operation and members of a cooperative, provided that the shareholders of the corporation, partners of the partnership, joint operators of a joint operation or members of a cooperative must be exclusively members of the same family. To be considered members of the same family, the members of an entity must be related by blood or marriage.

*Farmer Program loans.* This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood



Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

**Form plan.** Form FmHA 431-2, "Farm and Home Plan," or other plans or documents acceptable to FmHA that will accurately reflect the production and financial management of the farming operation for one production cycle. FmHA will not require the use of consolidated financial statements.

**Feasible plan.** A feasible plan is a plan based upon the applicant/borrowers' records that show the farming operations actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet scheduled payments on all debts, except as provided in § 1941.14 of Subpart A of Part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

**Foreclosed.** The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

**Homestead Protection.** This refers to the right of a former owner to lease with an option to purchase the Homestead Protection property, not to exceed 10 acres.

**Homestead Protection property.** This refers to a borrower's principal residence which collateralized a Farmer Program loan.

**Indian Reservation.** Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the

Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

**Inventory property.** For purposes of leaseback/buyback this refers to real property which collateralized a Farmer Program loan to which the Government has acquired title.

**Liquidated.** The completed act of voluntarily selling security property to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection only accounts are not considered liquidated.

**Loan service program.** Loan Service Program means a Primary Loan Service Program or a Preservation Loan Service Program for farmer program borrowers.

**Nonprogram (NP) loan.** A NP loan results when loan(s) are made to ineligible applicants and/or transferees in connection with loan assumptions and sale of surplus inventory properties at ineligible terms after first being offered for public sale by sealed bid or auction. A borrower is not considered to have a nonprogram loan if the borrower is found to be ineligible after receiving the loan when the reason the borrower was originally determined eligible by FmHA or, by a court of law, was due to a mistake on FmHA's part.

**Owner.** An individual or an entity which held the fee title to the security but who may or may not have operated the farm at the time it was taken in to inventory. The owner need not have been an FmHA borrower in the sense that the owner was personally obligated on a loan from FmHA, but the owner must have pledged the farm as security for a CONACT loan.

**Preservation loan service program.** Preservation loan service program means:

(a) Homestead protection as described in § 1951.911 of this subpart, and

(b) Leaseback or buyback of farm land as described in § 1951.911 of this subpart.

**Previous operator.** An individual or an entity who leased the farm which collateralized a CONACT loan and conducted the day to day business at the time the farm was taken into inventory. The previous operator does not need to be an FmHA borrower.

**Primary loan service program.**

Primary loan service program means:

(a) Loan consolidation, rescheduling, or reamortization;

(b) Interest rate reduction, including use of the limited resource program;

(c) Loan restructuring, including deferral, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(d) Any combination of actions listed in the paragraphs (a), (b), and (c) of this definition.

(1) **Consolidate.** Consolidate means to combine and reschedule the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans.

(2) **Deferral.** Deferral is an approved delay in making regularly scheduled payments, including (ST) loan.

(3) **Limited Resource Program.** The limited resource program is a reduction of interest rates for both operating loans (OL) and farm ownership loan (FO).

(4) **Reamortization.** Reamortization means to rearrange the installment payments of a real estate loan and may include changing the interest rate and terms of the loan made for Subtitle A purposes.

(5) **Reschedule.** Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(6) **Write-down.** For purposes of this part, write-down is reducing a borrower's debt in an amount that will result in a feasible plan of operation. This includes Farm Debt Restructure and Conservation Set-Aside Easements as set forth in Exhibit H.

**Security or security property.** This refers to the real property which secures a CONACT loan.

#### § 1951.907 Notice of Loan Service Programs.

(a) **Notification of Farmer Programs Borrower(s) Whose FmHA Loan Accounts Were Accelerated Between November 1, 1985 and May 7, 1987.** All Farmer Program borrowers whose accounts have been accelerated but not foreclosed or liquidated will be sent Exhibit A with Attachments 1 and 2, certified mail, return receipt requested. A cover letter for Exhibit A and Attachments 1 and 2 will be issued by AN. (available in any FmHA office) The cover letter will inform accelerated borrowers who requested income release as provided for in unnumbered letters dated January 25, 1988, and February 2, 1988, entitled "Reinstatement of Releases for Accelerated Borrowers," that they must complete their application for Primary and Preservation Loan Programs within 45 days. A priority will be given to processing of completed applications for Primary and Preservation Loan Servicing for those borrowers who were accelerated between November 1, 1985,



and May 7, 1987, who requested income releases. If a borrower, whose account was accelerated, does not respond to Attachment 1 of Exhibit A, within 45 days, Attachments 7 and 8 of Exhibit A to this subpart, will be sent to the borrower certified mail return receipt requested. If the entire payment is not received within 30 days after receipt of the borrower's response to Attachments 7 and 8 or a voluntary conveyance or sale equal to the market value of the property is not requested, the account will be liquidated in accordance with § 1955.15 (e) of Subpart A of Part 1955 of this chapter.

(b) *Notification of all other Farmer Program borrowers whose FmHA loan accounts have been accelerated.* Farmer Program borrowers whose FmHA loan accounts have been accelerated, but not foreclosed or liquidated, will be provided with Exhibit A and Attachments 1 and 2 of Exhibit A by certified mail, return receipt requested. If these borrowers do not respond within 45 days, they will be sent Attachments 7 and 8 of Exhibit A by certified mail, return receipt requested. If the entire payment is not received within 30 days after receipt of the borrower's response to Attachments 7 and 8 or a voluntary conveyance or sale equal to the market value of the property is not requested, the account will be liquidated in accordance with § 1955.15 (e) of Subpart A of Part 1955 of this chapter.

(c) *Notification of borrowers with bankruptcies pending on January 6, 1988 whose accounts have not been foreclosed or liquidated.* The attorney of borrowers with Chapter 7, 11, 12, or 13 bankruptcies pending on January 6, 1988, will be sent Exhibit D of Subpart A of Part 1962 of this Chapter and Attachments 1 and 2 of Exhibit A of this Subpart. The account will be serviced in accordance with instructions from the Regional Office of General Counsel (OGC), and in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

(d) *Notification of borrowers who have been discharged or who had plans confirmed in bankruptcy prior to January 6, 1988, and who have not been foreclosed or liquidated prior to January 6, 1988.* The attorneys of borrowers who have been discharged in Chapter 7 bankruptcy prior to January 6, 1988, will not be sent Attachments 1 and 2 of Exhibit A unless they have reaffirmed their FmHA debt and are 180 days delinquent. However, the attorney of all other borrowers with confirmed Chapter 11, 12 or 13 plans who are 180 days delinquent will be sent Exhibit D of Subpart A of Part 1962 of this chapter

and Attachments 1 and 2 of Exhibit A of this subpart. If the borrower has filed bankruptcy the account will be serviced in accordance with instructions from the Regional Office General Counsel (OGC) and in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

(e) *Notification of borrowers less than 180 days delinquent.* The County Supervisor will contact a delinquent farmer program borrower within 30 days after the borrower's account becomes delinquent and will, within 10 days, schedule a meeting to determine the reasons for the delinquency. A record of this contact will be placed in the borrower's loan file. If the borrower does not have the resources to bring the account current, the County Supervisor will use the FmHA computer program, Debt and Loan Restructuring System (DALRS) to consider the Primary Loan Service program authorized by § 1951.909 of this subpart in accordance with the order of processing established by § 1951.902 of this subpart. If the County Supervisor determines that the use of the Primary Service Programs will not assist the borrower in being able to develop a feasible plan, the County Supervisor will give the borrower Attachment 1 only of Exhibit A of this subpart. The County Office case file will be documented to provide a record that the borrower was provided a copy of Attachment 1 of Exhibit A of this subpart. If at the initial conference it is determined that write-down is the only alternative to keep the borrower in farming, the borrower's account will be processed in accordance with § 1951.909 of this subpart. Delinquent accounts will not need to be 180 days delinquent in order to consider writing down the debt.

(f) *Notification of borrowers 180 days delinquent.* Farmer Program borrowers who are 180 days delinquent, and in financial distress which exists because a borrower cannot develop a feasible plan by using rescheduling, reamortization, limited resource rates or deferral at maximum terms, will be sent Exhibit A with Attachments 1 and 2, "Notice of the Availability of Loan Service Programs," by certified mail, return receipt requested. Borrowers who are 180 days delinquent and have also violated their loan agreements with FmHA will be handled in accordance with paragraph (g) of this section. Exhibit D of Subpart A of Part 1962 of this chapter with Attachments 1 and 2, of Exhibit A of this subpart will be sent to the borrower's attorney if the borrower has filed bankruptcy. In addition to the requirements set forth above, FmHA County Supervisors will provide Exhibit A with Attachments 1

and 2 of this subpart to all Farmer Program borrowers, as follows:

(1) At the time an application is made for participation in an FmHA loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section.

(2) On written request of any Farmer Program borrower, whether delinquent or not, and

(3) If a borrower has not previously received Exhibit A with Attachments 1 and 2 of this subpart, such Exhibit and Attachments will be provided before the earliest of:

(i) Initiating any FmHA liquidation action,

(ii) Accepting a voluntary conveyance of security property, or the borrower requesting permission to sell security property,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or  
(vi) Taking any other collection action.

(g) *Notification of borrowers in non-monetary default or for delinquent borrowers also in non-monetary default or when a prior or junior lienholder is foreclosing and FmHA is notified of the foreclosure.* Farmer Program borrowers who are in non-monetary default will be sent Attachments 1, 3, and 4 of Exhibit A of this subpart. If any problems are encountered, OGC may be contacted for advice. If a case is in the hands of the U.S. Attorneys, no loan servicing action will be taken without the U.S. Attorneys' concurrence as set forth in § 1962.40 of Subpart A of Part 1962 of this chapter, or § 1965.26 of Subpart A of Part 1965 of this chapter, as appropriate.

Attachments 1, 3, and 4 of Exhibit A will be sent by certified mail, return receipt requested. If the borrower has filed bankruptcy the account will be serviced in accordance with instructions from OGC. Any servicing request will be processed as indicated in § 1951.909 of this subpart. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final FmHA appeal decision, that does not result in a resolution on the loan defaults, the account will be accelerated as set forth in § 1955.15 of Part 1955 of this chapter.

(h) *Request for primary or preservation loan service programs.* Farmer Program borrowers who are sent Exhibit A, with Attachments 1, 2 or Attachments 1, 3, and 4 must, within 45 days after receiving this exhibit and attachments, request consideration for



Primary Preservation Loan Service programs by completing Attachment 2 or Attachment 4, as appropriate, and returning to the FmHA County Supervisor with the required forms completed. FmHA will proceed with liquidation action if the borrower's request (Attachment 2 or Attachment 4) is not received within 45 days or the borrower is sent Attachments 3 and 4 and does not request a hearing within 30 days. If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the County Office unsigned. The 45 days response period will begin with the date the Post Office stamps the return receipt indicating the letter cannot be delivered to the borrower.

(1) An application for loan service programs will include the following forms (available in FmHA County Office):

(i) Form FmHA 410-1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FmHA debt.

(ii) Form FmHA 410-8, "Applicant Reference Letter."

(iii) Form FmHA 410-9, "Statement Required by the Privacy Act."

(iv) Form FmHA 431-2, "Farm and Home Plan," or any other plan acceptable to FmHA that sets forth a plan of operation.

(v) Form(s) FmHA 440-32, "Request for Statement of Debts and Collateral."

(vi) Form(s) FmHA 1910-5, "Request for Verification of Employment."

(vii) Form FmHA 1924-1, "Development Plan," if development is planned. Complete plans, specifications, and cost estimates must be attached to Form FmHA 1924-1. When development is required to comply with "Highly Erodible and Wetland" requirements, estimated costs and the conservation plan developed by SCS will be used to satisfy this requirement.

(viii) Form AD-1026, "Highly Erodible Land and Wetland Certification," is included as part of the complete application after being completed by SCS. (This is available at SCS County Offices.)

(ix) Form SCS CPA-26, "Highly Erodible Land and Wetland Determination," if not previously on file with FmHA for the farm operation(s). This form is included as part of the complete application after being completed by SCS. (This form is available at SCS County Offices.)

(x) An ASCS photo of the farm, on which the applicant must show the homestead site to be considered in processing a request for Homestead

Protection. This information does not need to be provided if the applicant does not want to be considered for homestead protection.

(xi) An ASCS photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the Farm Debt Restructure and Conservation Easement program. This information does not need to be provided if the applicant does not want to be considered for conservation easement.

(2) The FmHA County Supervisor will provide the borrower with copies of the above forms and forms manual insert (FMI) with each form when Exhibit A is forwarded to farmer program borrowers. When requested by the borrower, copies of FmHA regulations will be provided within 10 days of the request. The borrower's County Office case file will be documented to provide a record that the FmHA regulations were sent. Borrowers who were sent Exhibit A and Attachments 1 and 2 (borrowers who were 180 days delinquent) but not previously accelerated will be sent Attachments 9 and 10 of Exhibit A if they fail to respond within 45 days after they were sent Exhibit A and Attachments 1 and 2. If the borrower has filed for bankruptcy, the account will be serviced in accordance with instructions from OGC. The account will not be accelerated until any appeal has been concluded.

(3) No more than one 45 day period will be provided to a borrower to respond to the notice of loan service programs. Subsequent notices as provided for in § 1951.907 (f) and (g) of this subsection will not be issued until the first notice is resolved.

#### § 1951.908 [Reserved]

#### § 1951.909 Processing Primary Loan Service Programs Requests.

(a) *FmHA responsibilities.* Within 60 days after receipt of Attachment 2 or 4 and a completed application, the County Supervisor will consider all Primary Service Programs options in this subpart. The County Supervisor must use the FmHA computer program, Exhibit J, "Debt and Loan Restructuring System (DALRS)," to attempt to find the combination of loan service programs that will result in a feasible plan for the borrower. Borrowers requests for loan servicing who have disposed of all FmHA security property will be processed in accordance with Subpart B of Part 1956 of this chapter or Part 1864 of this chapter (FmHA Instruction 456.1), as appropriate. If the borrower's

completed application for Primary Loan Servicing includes a request for the Farm Debt Restructure and Conservation Set-Aside Easement Program, as indicated by the borrowers submission of the information required in § 1951.907(h)(1)(xi) of this subpart; the County Supervisor will determine if the borrower is eligible based on criteria as set forth in Exhibit H of this subpart. If the borrower is eligible, the County Supervisor will make an estimate of the inputs needed to permit the DALRS Computer Program to make the calculations of feasibility of the Conservation Set-Aside Easement. The assumptions used to establish the estimates will be documented in the borrower's case file and will be based on the County Supervisor's knowledge of the borrower's farm, land values, the borrower's repayment ability, and the proposed easement acreage. When the DALRS calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (i) of this section.

(b) *Adverse determination.* If the County Supervisor or approval official determines that the borrower is not eligible for any of the Primary Loan Service Programs or restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in § 1951.912 of this subpart. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent the Notice of Intent to Accelerate or to continue acceleration by using Attachments 5 and 6 of Exhibit A of this subpart. This will list and explain the options available to the borrower. The notice advises the borrower of the right to a meeting, right to appeal, right to an independent appraisal, and opportunity to buy the loans at net recovery value. The appeal, if any, will be completed before FmHA begins any further processing of the borrowers Preservation Loan Service Programs request. Once the appeal is concluded and the adverse decision on restructuring is upheld, and if the borrower has been determined eligible for the preservation programs, FmHA will complete the processing of the borrower's application for either Homestead Protection, Leaseback/Buyback, or both in accordance with § 1951.911 of this subpart. No acceleration or foreclosure will occur until the appeal process has been completed for both Primary and Preservation Loan Service Programs.

(c) *Eligibility.* The County Supervisor or approval official authorized by § 1951.903(b) of this subpart must find



that the borrower who has applied for Primary Loan Service Programs meets all of the following requirements:

(1) The delinquency or financial stress does exist and any delinquency is due to circumstances beyond the control of the borrower due to a reduction in income which reduces the operator's cash flow to a point where outflows exceed inflows and which causes the need for Primary Loan Service Programs. A reduction of income does not by itself mean that the borrower is eligible. Acceptable reasons for reductions of income which could make a borrower eligible for Primary Loan Service Programs include:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm; or

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payment cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or loan market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements set forth on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and agreements made with FmHA. Any allegations of fraud, waste, and conversion used in order to deny borrowers' requests for Primary Loan Service Programs will be substantiated by FmHA, with a written legal opinion from the Office of General Counsel, before denying the borrower's requests for such programs.

(3) All applications received from borrowers who apply for Primary Loan Servicing, even though they are not eligible, must be processed to determine whether or not a feasible plan of operation can be developed. *Borrowers who do not meet the eligibility criteria as set forth in paragraphs (c) (1) and (2) of this section, must be processed in the same manner as a borrower who does not meet the feasibility requirements.* See § 1951.909(h)(3)(ii) of this subpart.

(d) *FmHA's feasibility determinations.* The County Supervisor must determine that the borrower will be able to:

(1) Meet the necessary family living and farm operating expense; and

(2) Service all debts, including those of the loans restructured; and

(3) Except for the establishment of a conservation easement under Exhibit H of this subpart, the loan, if restructured, must result in a net recovery to the Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Government from an involuntary liquidation or foreclosure on the property securing the loan(s). A comparison to net recovery to the Government will not be made when using conservation easements.

(e) *Primary Loan Service Programs.* Any Farmer Program borrower may request Primary Loan Service Programs described in this subpart at any time. However, borrowers must show that they are not able to pay their debt as scheduled before FmHA will approve Primary Loan Service Programs. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Debt write-down will *only* be used for delinquent borrowers who cannot develop feasible plans of operations without debt write-down.

(1) *Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule existing loans, providing the borrower agrees to such actions. When the County Supervisor determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in § 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney and there are no FmHA plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the

development of a feasible plan of operation.

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of Exhibit M of Subpart G of Part 1940 of this chapter.

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the County Supervisor reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor will ask the Office of the General Counsel (OGC) for an opinion as to what lien position the Government will have if a new note is taken.

(vii) Only loans of the same type and interest rate will be consolidated.

(viii) EM actual loss and SL loans will not be consolidated.

(ix) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period.

(xi) If loans with a debt set-aside are to be rescheduled, the debt set-aside must be cancelled at the time the consolidation and/or rescheduling is granted. The borrower must agree in writing to cancellation of the debt set-aside if the consolidation and/or rescheduling is to be approved. If the set-aside portion is not cancelled, then only the non set-aside portion will be rescheduled.

(xii) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date of the new note is signed).

(C) Repayment of EE loans may not exceed 20 years from the date of the original note.

(xiii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled.



In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) Limited Resource Rate. At the time of the consolidation and/or rescheduling action, OL loans may be assigned a limited resource rate if: (1) The borrower meets the requirements for the limited resource interest rate, and (2) a feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiv) The original (old) note(s) will be marked "Rescheduled" and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies are filed as indicated above. If part of a note is written down, the written down note will be marked "Rescheduled with Debt Write Down," and will be filed as indicated above in this paragraph.

(xv) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* This subsection explains how the FmHA County Supervisor can reamortize existing loans. Farmer program non-program (NP) loan debtors are not eligible to receive any program benefits including reamortization (see § 1965.34 of Subpart A of Part 1965 of this chapter). When the County Supervisor determines that a reamortization action will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(i) The borrower meets the eligibility requirements of § 1951.909(c) of this subpart;

(ii) Such actions are not taken to circumvent FmHA's graduation requirements;

(iii) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney, and there are not plans to

have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes including all delinquent notes will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(vi) Loans that have been deferred in this subpart will not be reamortized during the deferral period.

(vii) If loans with debt set-aside provisions are to be reamortized, the debt set-aside will be cancelled. If the set-aside portion of the loan(s) is not cancelled, then only the non set-aside portion will be reamortized.

(viii) *Terms of repayment of reamortized loans are as follows:*

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The FmHA's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(C) The amount of accrued interest more than 90 days overdue and any advances charged to the borrower's account will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). If there are not deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principle between the date the Form FmHA 1940-17 is processed and the next installment due date. See Section II E of Exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue.

(ix) *Interest.*

(A) The interest rate will be the current interest rate in effect on the date

of reamortization (the date the new note is signed by the borrower), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be limited resource FO loan rate or the original loan note rate; whichever is less.

(B) At the time of the reamortization, an FO loan may be changed to a limited resource interest rate if: (1) The borrower meets the requirements for a limited resource interest rate, and (2) a feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section.

(x) The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue.

(xi) The original (old) note(s) will be marked "Reamortized" and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked "Reamortized with Debt write Down" and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.*

(i) *Loan deferrals.* Deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(A) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period.

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired



standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the schedule payments of all debts.

(iii) *FmHA's determinations.* The FmHA approval official must:

(A) Determine that the borrower meets the eligible requirements of § 1951.909(c) of the subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a feasible plan cannot be developed after consideration of a deferral, the County Supervisor will inform the borrower about the Softwood Timber (ST) loan program authorized by Exhibit G of this subpart by sending Attachment 1 of Exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the County Supervisor to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of Attachment 1, the County Supervisor will determine if the borrower is eligible, based on criteria as set forth in Exhibit G of this subpart. If the borrower is eligible the County Supervisor will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *FmHA loan deferral considerations.*

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represented the borrower's operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial, deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must submit feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request Primary Loan Service actions. It may be necessary to cancel existing deferrals or to defer additional loans to develop a feasible plan in such cases. If it is necessary to defer additional loans, such action will be taken if the deferral will result in a greater net recovery to the Government than debt write-down. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Special debt set-aside loans.* If a borrower desires a deferral for a loan that has a portion of the debt set-aside, the set-aside portion will be cancelled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who desires a deferral of a set-aside loan must first agree in writing to the cancellation of the set-aside if the deferral is approved.

(vii) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in §§ 1951.909(e)(1)(xiii) and 1951.909(e)(2)(ix) of this subpart.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the

deferral will show "zero" as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of of § 1951.909(e)(3)(v) of this subpart are met. The County Supervisor will determine the amount of interest that will accrue, if any, during the deferred period. This interest will be repaid in equal amortized installment during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with this subpart. The amount of outstanding accrued interest more than 90 days overdue and any outstanding credit advances made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). See Section II E of Exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue.

(B) The Finance Office will be notified of the deferral by the County Office completing Form FmHA 1965-22 and 1965-23. The FmHA Finance Office will remove the borrower's name from the delinquency report.

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter (available in any FmHA office). The Finance Office will provide the County Office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the FmHA debt.

(E) The County Supervisor must notify the Finance Office of any cancellation of a deferral by letter.

(viii) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by § 1924.60 of Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make



some payments during the deferral period, the County Supervisor will, in writing, ask the borrower to sign a Form FmHA 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request. The letter will provide the borrower with the right to appeal as set forth in subpart B of Part 1900 of this chapter. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the County Supervisor will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. If the borrower does not sign a Form FmHA 440-9 or appeal the request for a supplement payment within the required time, and/or does not honor the terms and conditions of the repayment agreement, such actions will be considered abuse of the program. The borrower's account will be handled as set forth in § 1951.907(g) of this subpart.

(4) *Special debt set-aside provision for a portion of the insured loan indebtedness of farmer program borrowers (NOT AVAILABLE AFTER SEPTEMBER 30, 1985).*

(i) *Period of time available.* The authorities contained in this section were available to financially stressed FmHA farmer program borrowers (OL, FO, EO, SW, EE, EM, RL but not association recreation loans and/or only those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985. The County Supervisor will maintain a record of approval special set-aside amounts, in accordance with FmHA Instruction 1905-A (available in any FmHA office).

(ii) *Finance Office Actions are as follows:*

(A) The FmHA Finance Office has established the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951-6.

(B) The Finance Office will provide each county office with a quarterly status report for each borrower receiving a set-aside.

(C) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount of the borrower's upcoming installment(s) due date.

(D) The interest rate on the set-aside portion of the note, after the set-aside period has passed, will be the same rate as on the non-set-aside portion of the note

(iii) *Cancellation of special set-aside agreements may take place under the following circumstances:*

(A) Borrowers who incur debt or purchase items not planned for in the Farm and Home Plan without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements, or cease farming will have their set-aside cancelled by the County Supervisor.

(B) The County Supervisor will send written notice by certified mail, return receipt requested, to the borrower of FmHA's intention to cancel the set-aside. This notification will set forth the specific facts requiring cancellation and inform the borrower of appeal rights in accordance with Subpart B of Part 1900 of this chapter. If the borrower does not appeal or if the FmHA decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation date of the set-aside. The actual cancellation action is not appealable.

(C) The County Office will be responsible for notifying the Finance Office of the cancellation action using a properly executed Form FmHA 1951-6 prepared according to the FMI.

(iv) *Requirements for servicing set-aside loans are as follows:*

(A) Loan notes which are rescheduled and contain set-aside provisions in accordance with this section will not be consolidated during the set-aside period unless the borrower agrees in writing to the cancellation of the set-aside if consolidation is approved.

(B) Loan notes which are rescheduled and do not contain set-aside provisions in accordance with this section may be rescheduled or reamortized in accordance with this subpart during the set-aside period. The rescheduling or reamortization action may be the limited resource rate, if applicable. The set-aside amount will stay in effect, but will not be increased or intensified beyond the original five-year term. The County Office will forward to the Finance Office Form FmHA 1965-22 and Form FmHA 1965-23 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked in red "Interest Change in Set-Aside."

(v) *Deficiency judgements.* Interest will begin to accrue (at the higher of the current interest rate or the judgement interest rate) on the set-aside portion if FmHA receives a deficiency judgement.

(5) *Write-down of FmHA loans.* Priority consideration will be given to writing down farmer program loans whenever such write-down will facilitate keeping the farmer on the farm

or ranching operation. The following conditions shall be met for write-down of FmHA loans:

(i) No other Primary Loan Service Program nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(ii) A feasible plan must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(iii) The borrower must present a preliminary plan that demonstrates that the borrower will be able to:

(A) Meet the necessary family living and farm operating expenses, and

(B) Service all existing and planned debts, and

(C) Comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter, if applicable, and

(D) Borrower must agree to a Shared Appreciation Agreement if the loan(s) is secured by real estate.

(iv) The borrower should participate in a meeting with creditors if it is necessary that the borrower's creditors make some debt adjustments that will permit the development of a feasible plan. This meeting may be in a Certified State Agricultural Mediation Program or a meeting of creditors arranged by FmHA, the borrower, or other creditor. Failure by the borrower to participate in meetings with FmHA and other creditors will be noted in the case file. Failure to participate will be listed as a reason for the intended adverse action on Attachment 5 Exhibit A of this subpart.

(v) *Rates and Terms.* Remaining debt after restructuring with the Primary Loan Servicing Programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section. The borrower must agree in writing to the cancellation of a fully or partially set-aside portion of the loan(s) if a write-down is approved.

(f) *Determining value of net recovery from involuntary liquidation.* Within 60 days of the County Supervisor's receipt of a complete application which requests Primary and Preservation Loan Service Programs, the County Supervisor must make the calculations required in this section.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt in accordance with Exhibit J, "Debt and Loan Restructuring System," and will follow



the guidance provided by State supplements and Exhibit I, "Guidance for Determining Adjustments for Net Recovery Value of Collateral." The County Supervisor will determine the current market value of the collateral including tangible and intangible property in existence and of record in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440-21, "Appraisal of Chattel Property (available in any FmHA office)." Collateral may include real estate, chattels, and tangible or intangible property. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible or intangible property may include accounts receivable, Government Payments. From the current market value of the collateral, the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral property;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in Exhibit B of FmHA Instruction 440.1, available in any FmHA office). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property, will be established by each State as of July 1 each year.

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(2) of this section.

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses; and

(vi) Add income which will be received after acquisition.

(2) *Determining costs of involuntary liquidation of collateral for farm loans.* The State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs and average holding time to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Exhibit I, "Net Recovery Value Determination," will be used in establishing the guidelines contained in the State supplement. Such costs analyses will be carried out in July of each year. State Directors will consult with State Directors of adjoining States, other lenders, real estate agents,

auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(h) *Notification requirements.* (1) If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral securing the debt, the County Supervisor will forward to the State Director the borrower's Farm and Home Plan and the original printout of the DALR\$ calculations. The County Supervisor will certify that the borrower meets all requirements for debt restructuring with the write-down amount specified on the printout. The State Director's authorization to the County Supervisor to proceed with the write-down will be evidenced by the State Director's signature affixed to the original copy of the DALR\$ printout returned to the County Supervisor. Within 60 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested and offer to restructure the debt. A printout of the DALR\$ calculations will be attached to Exhibit F, "Notifications of Approval Offer to Debt Restructure." Exhibit F will inform the borrower(s) of FmHA's offer to restructure the debt. If the borrower accepts the offer, within 45 days of the borrowers receipt of Exhibit F, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance of FmHA's offer to restructure the debt. If the borrower, both accelerated and nonaccelerated, do not respond to Exhibit F within 45 days, or declines FmHA's offer to restructure the debt, the County Supervisor will send Attachments 9 and 10 of Exhibit A of this subpart. If Attachment 10 is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or

foreclosed in accordance with § 1955.15 of subpart A of Part 1955 of this chapter.

(2) If the borrower previously returned Attachment 2 or 4 to Exhibit A of this subpart within 45 days, requesting a Farm Debt Restructure and Conservation Set-Aside Easement Program, by submitting an ASCS photo of the farm showing the portion of the farm and approximate acres to be considered in their request, the County Supervisor will proceed with processing the request for debt relief. The request will be processed as set forth in Exhibit H of this subpart.

(3) If the DALR\$ calculations indicate a feasible plan of operation cannot be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Set-Aside Easement Programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested.

(i) When the borrower has creditors other than FmHA, and a feasible plan of operation cannot be developed after consideration of Primary Loan Service, Softwood Timber and Farm Debt Restructure and Conservation Set-Aside Easement Programs, the borrower will be sent Exhibit E, "Notification of Request for Mediation or Meetings of Creditors," of this subpart, certified mail, return receipt requested. A printout of the DALR\$ calculations will be attached to Exhibit E. Exhibit E will inform the borrower that FmHA is requesting mediation or a meeting with the borrower's undersecured creditors holding a substantial portion of the borrowers debt, in an effort to obtain a debt adjustment agreement with such creditors which may permit the development of a feasible plan of operation. If the borrower does not respond to Exhibit E within 30 days (a response is only required in States without a certified mediation program), the County Supervisor will send Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be sent Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR\$ computer printout will be attached to Attachment 5 of Exhibit A. Attachment 5 of Exhibit A will inform the borrower of further rights. This section also applies to borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987, and other



accelerated borrowers whose accounts have not been foreclosed or liquidated.

(iii) As stated in Attachment 5, the borrower will have 45 days after the receipt of the notification of ineligibility to purchase the security property at net recovery value, provided the value of the restructured loan is less than the recovery value. FmHA will not provide credit for this transaction.

(iv) Prior to the buy out at net recovery value, the borrower must, as a condition of the sale, enter into written agreement by executing Exhibit C, "Net Recovery Buyout Recapture Agreement," of this subpart. The County Supervisor will process the net recovery buyout payment and will input the information to establish the recapture receivable account via the multi-function workstation. A new mortgage or deed of trust will be taken for the best lien obtainable. The new mortgage or deed of trust will describe Exhibit C and enter the amount due under the net recovery buyout recapture agreement. The new mortgage or deed of trust will secure repayment of the net recovery buyout recapture agreement. The old mortgage or deed of trust will be released in accordance with § 1951.909(k) of this subpart.

(i) *Administrative appeals.* (1) If the borrower appeals the decision to deny Primary Loan Service Programs, the 45 day period for the borrower to pay FmHA net recovery value of the collateral will start on the day the borrower receives the final appeal or review upholding the initial decision. Such decision letter will be sent to the borrower by the Hearing Officer or Review Officer certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office by the Hearing and/or Review officers.

(2) If the administrative appeal process results in a determination that the borrower is eligible for debt write-down, the County Supervisor will write-down the loan in accordance with this subpart, taking into consideration the write-down recommendations, if any, of the Appeal Officer. If the administrative appeal process results in a determination that the borrower is ineligible for debt write-down, the borrower will be sent Exhibit K and Attachment 1 of Exhibit K, advising the borrower of FmHA's intent to continue processing the application for Preservation Loan Service Programs as set forth in § 1951.911 of this subpart. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that Exhibit K is sent, the County Supervisor will continue to process the borrower preservation loan

service request in accordance with § 1951.911(a)(5) of this subpart. The account will not be accelerated or foreclosure will not continue, until the borrower has the opportunity to appeal any denial of the Preservation Loan Service request. If the borrower returns Attachment 1 of Exhibit K within 15 days of the date Exhibit K is sent, the account will be accelerated or foreclosure will proceed in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under § 1941.14 of Subpart A of Part 1941 of this chapter.

(3) If the borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by FmHA in accordance with § 1900.57 (1) of Subpart B of Part 1900 of this chapter. The borrower does not have to exclusively appeal the current market appraisal in order to be entitled to the independent appraisal, but simply must appeal the denial of Primary Loan Service Programs in which the appraisal, as part of the net recovery value calculation, is relevant. The cost of the appraisal must be paid by the borrower. The independent appraisal will be considered by the appeal officer. The independent appraiser must meet at least one of the following qualifications as determined by the FmHA County Supervisor:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraisers qualifications.

(j) *Processing of write-down.*

Borrowers who are eligible for Primary Loan Service Programs with write-down will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the write-down must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in § 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the write-down. The FmHA DALRS computer program will be used to determine the notes to be written down.

(1) A separate Form FmHA 1940-17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940-17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940-17 and on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(4) A Form FmHA 1940-17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the County Office before Form FmHA 1040-17 is processed.

(5) The County Supervisor will complete Form FmHA 1965-22, "Information on Assumption on New Terms or Other Change in Terms," Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms," and Exhibit D of this subpart in accordance with the provisions of the forms manual insert.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(k) *Real estate liens.* If the write-down of the borrower's real estate debt results in all debts to FmHA being written down, FmHA real estate liens will be maintained and will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of net recovery in a buy out, the original mortgage or deed of trust will be released on real estate for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative. Net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non real estate liens.* If a borrower does not own any real estate there will



be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of Net Recovery Value in a buy out, the original security instruments will be released on chattel security for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing debts written off as a result of Primary Servicing debt write-down or buy-out at net recovery value will be returned to the debtor or to the debtor's legal representative. The notes will be returned at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a buyout, the original and copies of the notes will be marked "satisfied by approved net recovery buyout." For write-down, the original and copies of the notes will be marked "satisfied by approved debt write-down." If a note is only partially written-down, the note will be returned to the debtor or debtor's legal representative when the note is paid in full. The original and copies of such notes will be marked "satisfied by approved partial write-down."

#### § 1951.910 [Reserved]

#### § 1951.911 Preservation loan service programs.

(a) *Leaseback/Buyback.* This section contains the policies and procedures pertaining to the Farmer Programs Leaseback/Buyback Program. The Farmer Programs Leaseback/Buyback Program will permit the previous owner of real property that was security for a Farmer Programs loan(s) to have the first opportunity to lease or purchase that property from FmHA. If the previous owner is not interested in leasing or purchasing the property, preference for leaseback/buyback will be given to the spouse and/or child(ren) of the previous owner who are actively engaged in farming (if the previous owner was an individual); entity members (if the previous owner is an entity that is composed exclusively of members of the same family) who are actively engaged in farming; and the immediate previous family-size operator (lessee). CONACT property that is acquired on or after January 6, 1988, that secured an FmHA loan will be considered for leaseback/buyback under this Section. CONACT property acquired prior to January 6, 1988, will also be considered under this section,

but only if the former owner/previous operator was not advised of his or her leaseback/buyback rights under FmHA's previous leaseback/buyback regulation. If there is a conflict between leaseback/buyback and FmHA's Homestead program, priority will be given to the application for homestead protection with respect to the lease of the borrower's principal dwelling. The same applicant may be considered for both leaseback/buyback and homestead protection if requested. The applicant can obtain homestead protection under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program. The authorities contained in this section supplement Subparts A, B and C of Part 1955 of this chapter and provide information that is necessary to administer the leaseback/buyback program. Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over the reservation in which such real estate is located is treated differently than real property located outside a reservation. See § 1955.66(d) of Subpart B of Part 1955 of this chapter for further details.

#### (1) Notification

(i) When a borrower(s) becomes at least 180 days delinquent on an FmHA loan(s), the borrower will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Service Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Loan Service Programs by sending Attachments 5 and 6 of Exhibit A of this subpart. If a borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA the net recovery value of the property, the borrower will be advised by use of Exhibit K with Attachment 1 of this subpart that FmHA will continue with the processing of Preservation Loan Service Programs unless the borrower returns Attachment 1 of Exhibit K within 15 days of the date of the Exhibit.

(ii) When FmHA acquires a farm property, the former owner will be sent Exhibit O of this subpart within 30 days. The former owner has 180 days from the date FmHA acquires the farm, to apply for leaseback/buyback, unless State law provides for a longer period. The Exhibit

will be sent certified mail, return receipt requested. If the former borrower/owner entered into a leaseback/buyback agreement (Exhibit N of this subpart) prior to FmHA acquisition of the real property, and such agreement has not terminated, Exhibit O will not be sent. The notification letter to an owner who is an individual will inform the owner that if the owner is not interested in leaseback/buyback, the owner's spouse or children, if actively engaged in farming, may be eligible for leaseback/buyback. It will be the responsibility of the owner to inform his or her spouse and/or children about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition or a period longer than 190 days if applicable State redemption laws prescribe a longer period. If the owner was an entity and the owner is not interested in leaseback/buyback, the notification letter will inform the owner it will be the responsibility of the owner to inform the entity members about their possible participation in the leaseback/buyback program and that they must notify the County Supervisor of their intent to participate in the leaseback/buyback program within 190 days from the date of acquisition or a period longer than 190 days if State redemption laws prescribe a longer period. The notification letter sent to the previous owner will also request the previous owner to notify the County Supervisor if the security was operated by a lessee at the time it was taken into inventory and, if so, to notify the County Supervisor of the name and address of that lessee. If the farm property is located within an Indian Reservation, and the former owner is a member of such Indian tribe, the Indian Tribe will be notified of the potential availability of the farm property for lease or purchase by sending Exhibit B of Subpart B of Part 1955 of this chapter. The Indian tribe will be notified at the same time as the previous owner.

(iii) If the previous owner provides FmHA with the name of the immediate previous operator (lessee), or if the County Supervisor is aware that the property was leased by the owner and knows the name and address of such immediate previous operator (lessee), the operator will be notified of leaseback/buyback by use of Exhibit P of this subpart. This letter will be sent Certified mail return receipt requested. The County Supervisor will send Exhibit P of this subpart to the operator (lessee) within 30 days after the 190-day period



or applicable period under State redemption laws has expired. The County Supervisor, however, may notify the operator (lessee) prior to the 190-day period after acquisition of the property or applicable period under State redemption laws if the previous owner, spouse and/or child (if the former owner was an individual), and entity members (if the former owner is an entity) inform the County Supervisor, in writing, that they are not interested in purchasing or leasing the property. The operator (lessee) will be given 30 days from the date he or she is notified about leaseback/buyback of their intent to participate in leaseback/buyback.

(iv) The rights regarding the lease or purchase of property provided by this section and accorded a person or entity described above may be freely and knowingly waived by such person or entity. Exhibit Q of this subpart will be used by each person or entity that wishes to waive their rights to leaseback/buyback.

## (2) Priority

(i) FmHA shall give priority for the leaseback/buyback program in the following order:

Priority 1. The immediate previous owner of the acquired property.

Priority 2. If actively engaged in farming:

a. The spouse or child of the previous owner if the previous owner was an individual;

b. If the previous owner was an entity, to the entity members of the corporation, partnership, joint operation or cooperative.

Priority 3. The immediate previous family-size farm operator of the security.

c. (If the farm property is located within an Indian Reservation and the former owner is a member of such tribe, see § 1955.66(d) of subpart B of Part 1955 of this chapter for leaseback/buyback rights of the Tribe.)

(ii) Within each of the foregoing priorities if there is more than one individual eligible for leaseback/buyback in any category who has indicated an intention, in writing, to the County Supervisor to participate in the leaseback/buyback program (e.g., one individual wants to purchase and the other individual wants to rent) priority within the category will be given to an individual who wants to purchase the security, either for cash or by credit sale. There is no preference for a cash sale over a credit sale; If there are two or more individuals in the same priority category who are eligible for leaseback/buyback who both want to purchase (or to lease if no one wants to purchase), priority will be determined by the County Committee. The County Committee will make their selection as to which individual has the greatest need for farm income and who best

meets the criteria for eligibility for a Farmer Program loan.

(iii) If there are individuals in different priority categories who inform the County Supervisor, in writing, of their intention to participate in the leaseback/buyback program, the County Supervisor will first consider the eligibility for leaseback/buyback of individuals in the highest priority in which there is interest before considering individuals in the lower priority. If an individual in a higher priority is eligible, the individuals in the lower priority will be notified by the County Supervisor that an individual with higher priority has been selected.

(iv) The inventory property will not be leased or sold until any appeals are exhausted.

(v) The rights afforded individuals under the leaseback/buyback program will only be offered once after the property comes into FmHA inventory. If a previous owner, previous owner's spouse or child, an entity member (if the previous owner was an entity held exclusively by members of the same family), or immediate previous family-size operator lessee leases the property and does not exercise the option to purchase and the lease terminates, no other individuals will be offered the property under the leaseback/buyback program. These individuals, however, may lease or purchase the property when it becomes available for lease or sale in accordance with Subparts B and C of Part 1955 of this chapter.

## (3) Receiving applications

(i) Borrowers who return Attachment 2 of Exhibit A of this subpart and a completed application as outlined in § 1951.907(g) of this subpart will have their applications processed for Primary Loan Service Programs before considering the application for leaseback/buyback. The County Supervisor will automatically consider the borrower for Preservation Loan Service Programs if the use of Primary Loan Service Programs will not allow the borrower to develop a feasible plan of operation.

(ii) Borrowers who return Attachment 2 of Exhibit A of this subpart must also be the owners of the real property to be considered for leaseback/buyback. Such borrowers will also be advised by Attachment 5 of Exhibit A of this subpart of the availability of Preservation Loan Service Programs.

(iii) Former owners who wish to make application for leaseback/buyback must make applications within 180 days or applicable period under State redemption law after the date FmHA acquires the property. Such application

will be made as outlined in § 1951.907(g) of this subpart.

(iv) The spouse or child of a former owner or entity members must make application for leaseback/buyback within 190 days or applicable period under state redemption laws after the date FmHA acquires the property. Such application will be made as outlined in § 1951.907(g) of this subpart.

(v) Operators must make application for leaseback/buyback within 30 days of receipt of Exhibit N of this subpart. Such application must be made as outlined in § 1951.907(g) of this subpart.

## (4) Eligibility

The County Supervisor will determine the applicant's eligibility.

(i) Previous Owner. The individual(s) or entity that held title to the property at the time FmHA acquired the property. The previous owner, as an applicant for leaseback/buyback, may be an operator of larger than a family size farm and may be a different individual or entity than the former borrower.

(ii) Spouse and child(ren) of previous owner (if the previous owner was an individual). The spouse and/or any child(ren) who apply for leaseback/buyback must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family size farm.

(iii) Entity members (if the previous owner was an entity), must be a member of the entity, held exclusively by members of the same family and must have been actively engaged in farming at the time of acquisition of the farm property. The applicant may be an operator of larger than a family size farm.

(iv) Previous operator must have been the operator (lessee) of the farm property at the time FmHA acquired the farm property from the former owner (lessor) and be an operator of not larger than a family size farm after execution of any lease or purchase agreement. The applicant does not need to be an FmHA borrower.

(v) All applicants must meet the application requirements of § 1951.911(a)(3) of this subpart.

(vi) If the County Supervisor determines the applicant is not eligible for leaseback/buyback, the applicant will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter.

## (5) Processing applications prior to acquisition of property

(i) An owner may apply for leaseback/buyback and/or Homestead Protection at any time before FmHA



acquires the owner's property. Such application must be in writing. If application is made for both leaseback/buyback and homestead protection, consideration will be given to both options and the borrower will be notified of both decisions simultaneously. The borrower will be allowed to retain possession and occupancy of the leaseback/buyback property while the application for leaseback/buyback is being processed.

(A) If the owner has requested leaseback, the County Supervisor will determine the owner can fulfill the terms and conditions of the lease. If the County Supervisor determines that the owner cannot fulfill the terms and conditions of the lease and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Supervisor determines that the owner can fulfill the terms and conditions of the lease, the County Supervisor and the owner will enter into a Leaseback/Buyback Agreement (Exhibit N of this subpart) to lease the property to the owner if and when FmHA acquires title. The lease will contain an option to purchase the property. A copy of the Form FmHA 1955-20, "Lease of Real Property," will be attached to the agreement as an exhibit. The agreement will provide that FmHA's obligation to enter into a lease/sale of the property is contingent on FmHA acquiring fee title to the property. The agreement will contain a provision that if the lease/sale does not close within 2 years from the date of the agreement, the agreement (and FmHA's obligation to lease/sell) will end.

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with Subpart A of Part 1943 of this chapter and the County Supervisor will determine the feasibility of the proposed operation before entering into the leaseback/buyback agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County

Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955-45, "Standard Sales Contract—Sale of Real Property by the United States:"

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close.

(C) If the owner has requested buyback of the property as a credit sale on ineligible rates and terms, the County Supervisor will determine eligibility and feasibility before entering into the leaseback/buyback agreement. If the County Supervisor determines that the owner is not eligible, that the purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart, appeal rights will be given in accordance with Subpart B of Part 1900 of this chapter. If the County Supervisor determines that the owner is eligible for a credit sale on ineligible rates and terms, when the security is taken into inventory, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955-45:

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for creditworthiness and repayment ability at the time the credit sale is ready to close. The credit sale will close as soon as possible after FmHA acquires title to the security and any other contingencies are satisfied.

(D) If the owner has requested buyback of the property by paying cash, the County Supervisor will enter into Form FmHA 1955-45 with the owner subject to the following contingency which will be inserted in Form FmHA 1955-45:

FmHA's obligation to close the sale is contingent on its acquiring title to the property within 2 years from the date of the agreement.

(ii) If the owner has requested leaseback/buyback of the real property, FmHA may as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA and immediately lease or credit sale the real property back to the former owner. FmHA may credit sale all the chattel

property back to the former owner. These agreements are subject to the following items being concluded before completing any transaction:

(A) Based on the market value of the property and FmHA's potential recovery value, it is determined to be in the Government's best interest to acquire title to the property. Exhibit G of Subpart A of Part 1955 of this chapter will be used to determine if it is in the Government's best financial interest to accept the voluntary conveyance.

(B) Any remaining debt after conveyance of the chattel and of real estate property will be debt settled in accordance with Subpart B of Part 1956 and Part 1864 (FmHA Instruction 456.1) of this chapter.

(C) The County Committee determining that the former owner is eligible for any proposed credit sale on eligible rates and terms.

(D) The County Supervisor determining that the former owner has repayment ability and creditworthiness for a credit sale or sufficient experience, management skills, financial resources to assure a reasonable prospect of success in the farming operation for leaseback.

(E) If the property contains wetlands, floodplains, and/or highly erodible land, necessary deed restrictions will be placed on the property as set forth in Exhibit M of Subpart G of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter.

(iii) All transactions involving a voluntary conveyance, leaseback/buyback and/or homestead protection will be executed simultaneously.

(6) *Processing leaseback requests.* The applicant must furnish the necessary financial information, as set forth in section 1951.907(g) of this subpart, to assist the County Supervisor in determining if a feasible plan of operation can be developed. If the County Supervisor determines the applicant can meet the terms of the lease and has sufficient experience, management skills and financial resources to assure a reasonable prospect of success in the farming operations, the County Supervisor may approve the lease on Form FmHA 1955-20.

(i) The term of the lease may be from 1 to 5 years. The lessee will select the term of the lease. Leases may be for cash or crop share. If the lessee is able to pay the cash lease payment at the time the lease is executed, a feasible plan is not required.

(ii) All leases under the leaseback/buyback program will contain an option to purchase. Terms of the option will be



set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955-20. The purchase price (option price) will be the lower of the capitalization value or market value at the time the option is exercised as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422-1, "Appraisal Report—Farm Tract." The option to purchase may be exercised any time during the term of the lease. All options expire when the lease term ends.

(iii) Leaseback property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount. The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities and income. The amount of the rental will be determined by the County Supervisor. Prior to entering into a leaseback/buyback agreement, the County Supervisor will advise the applicant by letter, of the rent amount. If the leaseback applicant disagrees with the proposed rental, the applicant can appeal in accordance with Subpart B of Part 1900 of this chapter.

(iv) The lease payments will not be applied toward the purchase price.

(7) *Processing buyback request.* The applicant must furnish the necessary financial information in accordance with § 1951.907(g) of this subpart to assist the County Supervisor in determining if the applicant can meet the terms of any purchase agreement. If the applicant has requested the property to be financed with a credit sale, a determination will need to be made if the applicant has sufficient experience, management skills and financial resources to assure a reasonable prospect of success.

(i) Title clearance and loan closing will be handled in accordance with 7 CFR Part 1807 (FmHA Instruction 427.1) and the terms specified in Form FmHA 1955-49.

(ii) The purchase price will be the lower of the capitalization value or market value as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form 422-1. If there is more than a 5 percent difference between the capitalization value and the market value, the appraisal will be reviewed by the State Director's designee. The reviewer will determine if the appraisal values are adequately supported.

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with Subpart A of Part

1943 of this chapter) and a credit sale processed in accordance with Subpart C of Part 1955 of this chapter or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with Subpart A of Part 1943 of this chapter) and the value of the property is greater than \$200,000, the property may be financed with a \$200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in Subpart A of Part 1943 of this chapter. If the value of the farm property is greater than \$200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over \$200,000, FmHA may finance the purchase of the property with a credit sale on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

(8) *Special provisions.* The County Supervisor must take into consideration the following provisions:

(i) *Subdividing property.* The rights afforded an individual or entity under FmHA's Leaseback/Buyback program are for the total farm property. Farm property will not be subdivided for lease or purchase for such persons or entity. If the property is larger than a family-size farm, and no person or entity exercises leaseback/buyback rights, the property will then be subdivided and sold in accordance with Subpart C of Part 1955 of this chapter.

(ii) *Contingency for Homestead Protection.* If the inventory property selected for leaseback/buyback wants to lease or purchase is subject to Homestead Protection rights by someone other than the selected individual, FmHA's obligation to enter into the lease or close the sale will be contingent on FmHA's prior compliance with all local laws, ordinances and regulations, if any, governing the subdivision of land. The Homestead Protection property must be a separate parcel. The Homestead Protection property will be excluded from the leaseback/buyback property. If necessary, FmHA will grant and/or retain for the benefit of adjoining property, reasonable easements for

ingress, egress, utilities, water rights, etc.

(iii) *Wetlands, floodplains and/or highly erodible land.* If the property contains lands that are wetlands and/or floodplains, the prospective lessee or purchaser will be informed by FmHA of its presence and location, along with the USDA restrictions regarding its use, as set forth in Exhibit M of Subpart C of Part 1940 of this chapter and Subparts B and C of Part 1955 of this chapter. The provisions of a purchase agreement or a lease agreement for farm inventory property that is "highly erodible land," as determined by the Soil Conservation Service (SCS), must contain, as requirements of the lease or sale, conservation practices specified by the SCS and approved by FmHA as a condition of the lease or sale. If the land is under an Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program (CRP) contract, the purchaser/lessee shall assume the CRP contract. This requirement shall be included as a provision in all leases or sale documents entered into pursuant to the leaseback/buyback program.

(iv) *State laws and State supplements.* In the event of any conflict between any provisions of the FmHA leaseback/buyback program, as outlined in this Section and any provisions of State law providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of land to any other person, such provision of the State law shall prevail. State supplements will be prepared with the assistance of the Office of the General Counsel as necessary, to provide guidance to FmHA officials as to how to comply with the State laws. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006-B (Available in any FmHA office).

(v) *Appeal rights.* Denial of applications for or disputes over terms and conditions of a lease or purchase agreement under the leaseback/buyback program, are appealable pursuant to Subpart B of Part 1900 of this chapter.

(vi) *Other provisions.* For additional guidance on the acquisition, management and sale of inventory farm property (CONACT property), the County Supervisor should refer to Subparts A, B and C of Part 1955 of this chapter.

(b) *Homestead Protection.* This paragraph contains the policies and procedures pertaining to the Farmer Program Homestead Protection Program. The Homestead Protection Program is a "Preservation Loan Service Program" as



set forth in this Subpart. A borrower or former borrower who had or has a Farmer Program loan secured by the real property containing the dwelling which was used as the borrower's principal residence may apply for Homestead Protection before or after FmHA acquires the property. Farm real property that is in FmHA inventory as of the effective date of this regulation or is acquired in the future that secured a Farmer Program loan to individuals or entities will be considered for Homestead Protection as set forth in this subpart. If there is a conflict between applicants for Leaseback/Buyback (see § 1951.911(a)) and Homestead Protection, priority will be given to the application for Homestead Protection. An applicant can apply for both Homestead Protection and Leaseback/Buyback at the same time. The applicant can obtain the Homestead Protection property under the Homestead Protection Program and the balance of the farm under the Leaseback/Buyback Program.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit a borrower or former borrower who is eligible for Homestead Protection to retain their dwelling through a lease and/or purchase. Such lease and/or purchase could permit a borrower or former borrower to have a home which could be a headquarters which could provide an opportunity to continue to farm and reestablish a feasible farming operation.

(2) *Notification and Processing.* When a borrower(s) becomes at least 180 days delinquent on FmHA loan(s), the borrower will be sent Exhibit A with Attachments 1 and 2 of this subpart. Sending of this Exhibit and Attachments will be the notice to the borrower of the availability of Primary and Preservation Loan Programs. If a feasible plan for restructuring the borrower's debt cannot be developed using Primary Loan Service Programs, the borrower will be notified of Preservation Service Programs by sending Attachments 5 and 6 of Exhibit A of this subpart. If the borrower requests an appeal and the adverse decision is not overturned, the borrower does not request an appeal or fails to pay FmHA the net recovery value of the property, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart, that FmHA will continue with the processing of Preservation Service Programs. A borrower who desires to apply will request homestead protection in accordance with the provisions of § 1951.907 of this subpart before the property is acquired and paragraph

(b)(2)(iii) of this section after the property is acquired. A borrower who desires to participate in the program must request Homestead Protection by applying in accordance with § 1951.907 (g) of this subpart or paragraph (b)(2)(iii) of this section. The borrower will be allowed to retain possession and occupancy of the homestead protection property while an application for Homestead Protection is being processed. A borrower who meets the eligibility requirements in paragraph (b)(3) of this section will be permitted to retain possession of the homestead in accordance with paragraph (b)(2)(ii) of this section before title is acquired or under a lease with an option to purchase after title to the property is acquired.

(i) *General.*

(A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The County Supervisor will review the borrower's proposed homestead protection property and will make a physical inspection of the property, if necessary. If the County Supervisor does not agree with the proposed shape or size of the property, the County Supervisor and borrower will agree on an alternate size and shape for the property.

(C) If the borrower and the County Supervisor cannot agree on the proposed shape and size of the property, the County Supervisor will make the determination. The borrower may appeal pursuant to Subpart B of Part 1900 of this chapter.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible by the County Supervisor, the County Supervisor will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(7) and (b)(8)(ii)(B) of this section.

(ii) *Processing Homestead Protection Before FmHA Acquires Title.*

(A) A borrower will be considered for eligibility for Homestead Protection when it is determined that the Primary Loan Service Programs cannot help. Exhibit K with Attachment 1 of this subpart will be sent to the borrower. The borrower must return Attachment 1 and indicate the buildings and land to

be included in the request for homestead protection in order to continue the processing of his/her application. If the County Supervisor determines the borrower is eligible for Homestead Protection, the County Supervisor and the borrower will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the Homestead Protection property to the borrower if and when FmHA acquires title. A copy of Form FmHA 1955-20, "Lease of Real Property," will be attached to the Agreement as an Exhibit.

(B) The Agreement will provide that FmHA's obligation to enter into a lease of the Homestead Protection property is contingent on FmHA acquiring fee title to the Homestead Protection property.

(C) FmHA's obligation to lease the dwelling to the borrower will also be contingent on FmHA's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. The Agreement will contain a provision that if FmHA cannot satisfy the foregoing conditions within 2 years from the date of the Agreement, the Agreement (and FmHA's obligation to lease with option to purchase) will end and the account will be accelerated or acceleration continued.

(iii) *Application for Homestead Protection After FmHA Acquires Title.* When FmHA acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, within 30 days from the acquisition date. The borrower must request Homestead Protection by notifying the County Supervisor in writing not later than 90 days after FmHA acquires the property. The borrower must give the County Supervisor the information set forth in § 1951.907 (g) of this subpart and indicate the buildings and land to be included in the request for Homestead Protection.

(iv) *Lease with Option.* A lease with an option to purchase will be entered into with an eligible borrower on Form FmHA 1955-20 after FmHA acquires title to the property. Form FmHA 1955-20 will be completed in accordance with § 1951.911 (b)(8) and the FMI.

(3) *Eligibility.* The County Supervisor will make the determination on eligibility. In order to qualify for homestead protection the borrower must meet the following eligibility requirements:

(i) An applicant for Homestead Protection must be an individual who is or was personally liable for the Farmer Program loan that was secured in part by the Homestead Protection property.



The applicant must also be or have been the owner of the Homestead Protection property. The Farmer Program loan could have been made to an individual or to an entity, as long as the applicant for homestead protection was a member of the entity and was personally liable for the Farmer Program loan. A member of an entity who is or was personally liable for a Farmer Program loan that is or was secured by the homestead protection property is considered an owner for homestead protection purposes.

(ii) When more than one member of an entity was personally liable for a Farmer Program loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for a Farmer Program loan, may apply separately for homestead protection of their individual dwellings.

(iii) The applicant and any spouse must have received from the farming or ranching operations gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. For the purpose of this subparagraph and subparagraph (iv) below, income from farming or ranching operations will include rent paid to the borrower by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. In determining whether or not the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions, the borrower's records will be analyzed. When the borrower applies for homestead protection the borrower will give the County Supervisor at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and County Supervisor from information relating to yields, expenses and prices found in the borrower's County Office case file, ASCS records or other reliable sources.

(iv) The applicant and any spouse must have received from the farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 of the 6 calendar years preceding the calendar year in

which the application for Homestead Protection is made.

(v) The applicant must have continuously occupied the Homestead Protection property during the 6-year period preceding the calendar year in which the application is made, unless the applicant had to leave the property for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment or conditions that made the dwelling uninhabitable.

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition. The applicant must also agree to all the terms and conditions set forth in § 1951.911 (b)(8) of this section and in Form FmHA 1955.20.

(4) *Transfer of Homestead Protection Rights.* The applicant's rights to Homestead Protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse of the applicant if the spouse agrees to comply with the terms and conditions of the lease by executing a new lease on the same terms and conditions.

(5) *Appeal Rights.* If the County Supervisor determines that the applicant is not eligible for Homestead Protection or the lease is terminated because the lessee fails to make lease payments as scheduled or to maintain the property in good condition, the County Supervisor will notify the applicant or lessee in writing of the decision and give the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. The property will not be leased or sold until the appeal is concluded.

(6) *Property Requirements.*

(i) The proposed Homestead Protection property tract must meet all requirements for the division of the Homestead Protection property into a separate legal lot as required by State and local laws. All environmental considerations required under the provisions of Subpart G of Part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by FmHA. Such costs will be handled in accordance with § 2024.753(c) of FmHA Instruction 2024-P (available in any

FmHA office). No repairs or improvements will be paid for by FmHA except as provided for in § 1955.64(a) of FmHA Instruction 1955-B (available in any FmHA office).

(iii) If necessary, FmHA will grant and/or retain for the benefit of adjoining property reasonable easement(s) for ingress, egress and utilities, water rights, etc.

(7) *Appraisal.* The current market value of the Homestead Protection property shall be determined by an independent appraisal made within six months from the date of the borrower's application for Homestead Protection. The applicant will select an independent real estate appraiser from a list of at least three appraisers approved by the County Supervisor.

(i) The County Supervisor will develop and maintain, in the County Office operational file, a list of at least 3 qualified independent appraisers. See § 1951.909(i)(3) of this subpart.

(ii) The cost of such an appraisal will be handled in accordance with paragraph (b)(6)(ii) of this section.

(iii) Independent appraisals are appealable.

(8) *Terms of the Lease and Exercising the Option.*

(i) All leases will have an option to purchase. Any reference to a lease for Homestead Protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form FmHA 1955-20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located. The County Supervisor will document in the case file, a sufficient number of equivalent rents charged in the area for such properties to support the lease amount.

(B) Lease payments will be retained by the Government and remitted in accordance with FmHA Instruction 1951-B.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling retention property under this section. As soon as a lease payment is delinquent, the lessee will be notified in writing that if the payment is not received within 30 days from the date of the notification, the lease and all rights



of the lessee to possession and occupancy of the property including the right to exercise the option to purchase will be terminated. The County Supervisor will notify the lessee in writing of the termination of the lease and option and give the lessee the opportunity to appeal the decision pursuant to Subpart B of Part 1900 of this chapter. The lessee will continue to occupy the dwelling under the terms of the lease during an appeal of the termination decision. FmHA will comply with all applicable State and local laws governing eviction from residential property.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase. This stipulation will be added to the lease. The act of an applicant exercising his or her rights under the leaseback/buyback program is not considered as interfering with the Government's efforts to lease or sell the property.

(ii) *Exercising the Option to Purchase.*

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the FmHA County Supervisor a signed, written statement notifying FmHA that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option in the lease to purchase the property, the purchase price will be the current market value of the homestead protection property. The current market value will be determined by an appraisal in accordance with paragraph (b)(7) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(7) of this section.

(C) The homestead protection property may be sold for cash or financed with a credit sale. At the time the lessee exercises the option the lessee must notify the County Supervisor if he or she wants to purchase the property for cash or finance it through a credit sale from FmHA.

(D) If a credit sale is involved, the applicant must furnish the County Supervisor the information set forth in § 1951.907(g) of this subpart to assist in determining whether or not the

applicant has adequate repayment ability.

(9) *Rates and Terms for a Credit Sale.* Terms for a credit sale of Homestead Protection property when the lessee is exercising the option to purchase and has qualified for a credit sale will not exceed 35 years with equal amortized monthly installments. No down payment will be required. The interest rate for Homestead Protection will be as set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(10) *Closing.* A credit sale will be closed in accordance with Subpart C of Part 1955 of this chapter.

(11) *Conflict with State Law.* In the event of a conflict between a borrower's Homestead Protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(12) *State Supplements.* State supplements will be prepared with the assistance of OGC, as necessary, to comply with State laws to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006-B (available in any FmHA office).

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in Subpart A of Part 1965 of this chapter.

§ 1951.912 *Mediation.*

(a) *States With a USDA Certified Mediation Program.* The FmHA is requested to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties.

(1) FmHA shall participate in a USDA certified mediation Program, under the same terms and conditions as other creditors. Decisions will not be binding on FmHA unless approved by the representative assigned by FmHA in accordance with § 1951.912(a)(4) below.

(2) Mediation fees, if charged to FmHA, will be paid by completing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and submitting Form FmHA 2024-1, "Miscellaneous Payment System," for payment as a non-recoverable cost in accordance with FmHA Instruction 2024-P (available in any FmHA office).

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude the FmHA from granting Primary Loan Service programs to assist borrowers.

(4) The FmHA State Director will designate a representative, to represent FmHA in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA, to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA State Director will arrange for adequate training for representatives designated to represent FmHA in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower Attachments 5 and 6 of Exhibit A of this subpart.

(7) The FmHA State Director will develop a State supplement that describes how FmHA will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Mediation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional Office of General Counsel as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006-B (available in any FmHA office).

(b) *States without a certified mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA representative. State Directors are encouraged to contract for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes.

(1) When a mediator is available the County Supervisor will assist the mediator in scheduling a meeting with the borrower and all of the borrower's



undersecured creditors, holding a substantial part of the borrower's debt and encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmers in resolving their financial difficulties.

(2) When a mediator is not available the State Director will designate an FmHA representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. The term "creditors" shall only apply to those undersecured creditors who represent a substantial portion of the borrower's debt. State Directors will designate a representative, or FmHA employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) Duties of Designated FmHA Representative For Conducting a Meeting of Creditors. The representatives will:

(i) Schedule a meeting between the borrower and the borrower's undersecured creditors, holding a substantial part of the borrower's debt and encourage them to participate in such a meeting.

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties.

(iii) Inform the borrower and creditors concerning FmHA programs available to assist the borrowers.

(iv) Encourage the parties to utilize all available means to assist the borrower to overcome the financial difficulty.

(v) Advise, counsel, and facilitate the development of a debt restructure Agreement between the borrower and creditors which will permit the borrower to remain in farming.

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution.

(vii) Review the obligations of the participants, including but not limited to the following:

(A) The maintenance of confidentiality.

(B) Promote good faith discussions in an effort to reach agreement.

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be

distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation, the County Supervisor will proceed with processing and approval of the borrowers request for Primary Loan Servicing.

(5) When the FmHA representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached the FmHA representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating an agreement cannot be reached, Attachments 5 and 6 of Exhibit A of this subpart will be sent to the borrower.

(6) State Directors will provide the necessary training to insure that the FmHA representative has the necessary skills to effectively conduct a voluntary meeting between a borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude the FmHA from using debt write-down if it would result in a greater net recovery to FmHA than liquidation. Whenever the net recovery to FmHA will be greater using the write-down than to go through foreclosure, FmHA will use the write-down, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause, and a feasible plan of operation cannot be developed the County Supervisor will send the borrower Attachments 5 and 6 of Exhibit A of this subpart.

#### § 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) Borrowers who entered into Net Recovery Buyout Recapture Agreements will have their recapture receivable accounts serviced as follows:

(b) The Finance Office will credit the borrowers account with the amount paid by the borrower (net recovery value). A recapture receivable account will be established in an amount equal to the difference between the net recovery value and the market value of the real estate security property as of the date

the net recovery buyout agreement is signed by the borrower.

(c) The County Supervisor will establish a follow up to review the County real estate records every 6 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold the real estate property covered by the Agreement. The results of the review will be recorded in the borrower's County office case file. These reviews will end two years from the date of the net recovery buyout recapture agreement.

(d) If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due.

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower.)

(3) If the borrower fails to pay any amount due to FmHA as the result of a sale of the property, the account will be accelerated as set forth in § 1955.15 of Subpart A of Part 1955 of this chapter.

(e) The County Supervisor will issue Form FmHA 451-2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the Recapture Agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

(f) When the amount of the net recovery buyout has been paid and credited to the borrowers account, the borrower will be released from personal liability. The recapture agreements will be marked "satisfied at net recovery value" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in the usual manner.

(g) If the County Supervisor determines there is no recapture due, Exhibit B of the subpart will be prepared and sent to the Finance Office to credit the borrowers recapture receivable account with the amount of debt to be written off. Exhibit C will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

#### § 1951.914 Servicing of Accounts Restructured Under Primary Loan Service Programs.

(a) Borrowers whose accounts have been restructured will be serviced as



provided for in § 1951.909 of this subpart.

(1) The County Office will input via the multifunction work station, an equity receivable account in the amount shown on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(2) The borrower's account will be credited with the amount of debt written down.

(3) Six months prior to the end of the shared appreciation Agreement, not to exceed 10 years, the Finance Office will notify the County Supervisor of the expected final date of the recapture.

(4) The County Supervisor will establish a follow-up to review the County real estate records every 6 months starting from the date of the Shared Appreciation Agreement to determine if the borrower has sold the real estate property covered by the Agreement or transferred title to such property. The results of the review will be recorded in the borrowers County office case file.

(5) If the County Supervisor determines that the borrower has sold the real estate or transferred title, an appraisal of the real estate will be completed. If the appraisal indicates that there is a positive value between the current market value at the time the Shared Appreciation Agreement was signed and the current market value at the time the borrower conveyed the real estate or transferred title, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(i) The amount of recapture due.  
(ii) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower.)

(iii) Appeal rights as set forth in Subpart B of Part 1900 of this chapter.

(iv) If the borrower appeals the current market appraisal, cost of a new appraisal will be shared equally by FmHA and the borrower. The borrower will select an appraiser from the list of FmHA approved appraisers. The selection of the appraiser must be made by the borrower within 15 days of the receipt of the recapture due letter by the borrower.

(v) The appeal of the recapture amount due will be concluded prior to any further action by FmHA.

(vi) If the borrower does not appeal within 30 days or does not pay the amount, the FmHA will proceed as set forth in § 1951.907(g) of this subpart.

(b) Servicing Shared Appreciation Agreements. Recapture of any appreciation will take place at the end

of the term of the Agreement, or sooner if the following occurs:

(1) On the conveyance of the real security property by the borrower; however, transfer of title to the spouse of the borrower on the death of such borrower, will not be treated by FmHA as a conveyance. Recapture will take place, if the surviving spouse conveys the subject property or at the end of the recapture Agreement, whichever comes first.

(2) On the repayment of the loans;

(3) If the borrower/spouse ceases farming operations; or

(4) Five months prior to the end of the Shared Appreciation Agreement. The County Supervisor will inform the borrower by letter of the following:

(i) The date the recapture is due.  
(ii) The borrower must select an FmHA approved appraiser from the list provided to establish the current market value of the property subject to recapture.

(iii) The cost of such appraisal to be shared equally by FmHA and the borrower.

(iv) The borrower must inform FmHA of the appraiser selected within 15 days from the date of the letter indicated in paragraph (b)(4) of this section.

(c) Procedures for Recapture at the End of Shared Appreciation Agreement:

(1) The borrower will be notified by certified mail, "return receipt requested" of the recapture amount due and payable. This notification letter will also include the recapture calculations and appeal rights. If the borrower cannot obtain satisfactory financing to pay the recapture, the amount to be recaptured will be added on the principal of the note and the note will be reamortized over the remaining life of the loan(s) at the applicable rate of interest. If the borrower is financially capable of paying the recapture, as determined by the FmHA County Committee and the payment is not made by the borrower within 180 days from the date due, the borrower's account will be treated as delinquent and FmHA will send Attachments 1 and 2 of Exhibit A of this subpart.

(2) The County Supervisor will issue Form FmHA 451-2, "Schedule of Remittance," for all the payments received under the Recapture Agreement. The following statement should be recorded in the body of the form: "Equity Receivable Payment," along with a copy of the recapture Agreement and a copy of Exhibit B, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable," of this subpart.

(3) When the full amount of the shared appreciation and the remaining FmHA

indebtedness have been paid and credited to the borrowers account, the borrower will be released from personal liability. Notes evidencing debts and shared appreciation agreements will be marked "paid in full" and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in the usual manner.

(4) If the amount of recapture due is not equal to the amount of the borrowers recapture receivable account, Exhibit B of this subpart will be submitted to the Finance Office to credit the borrowers account with any amount of remaining debt to be written off.

(5) If the County Supervisor determines there is no recapture due, Exhibit B of the subpart will be prepared and sent to the Finance Office closing the borrowers recapture receivable account.

#### § 1951.915 [Reserved]

#### § 1951.916 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator; or upon request initiated by the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

#### §§ 1951.917 FmHA Debt Restructuring Support Teams (DRST).

(a) *State Office DRST.* Each State Director shall form DRSTs to be deployed when unusually large numbers of Primary and Preservation Servicing applications are received. DRSTs shall assist in expediting the processing of both Primary and Preservation Loan Service Program Applications.

(1) State Directors shall use the DRSTs formed in their State(s) and all other FmHA personnel within their States(s) in processing Primary and Preservation Loan Service Applications.



If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request assistance.

(2) Upon request of a State Director, the Administrator, will consider detailing DRSTs from other States to assist in processing Primary and Preservation Loan Service Applications.

(3) State DRSTs will consider of a team leader and team members, selected by the State Director.

(4) State DRSTs will be trained as follows:

(i) The National Office will participate in training meetings or workshops for DRST leaders as requested; and

(ii) States will be responsible for training and keeping the State team currently informed on all phases of processing applications for Primary and Preservation Programs.

(5) Each State Director will issue a State Supplement establishing a DRST for the State(s) under his/her jurisdiction. This Supplement will name the team leader and all members. A copy of this Supplement will be sent to the National Office, Attention: Assistant Administrator Farmer Programs.

(b) *National Office DRST Leaders.* The National Office will establish a cadre of DRST team leaders.

(1) National Office team leaders will be used as follows:

(i) Assisting State Directors in training of FmHA field personnel, other USDA personnel, and temporary personnel in the processing of Primary and Preservation Loan Service Program applications.

(ii) Assisting State Directors in the organizing and expediting of assistance to eligible applicants; and

(iii) Leading DRSTs in areas with an unusually large volume of primary and preservation loan service Program applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of the processing of primary and preservation loan service Program applications.

#### § 1951.918 FmHA Debt Restructuring Assessment Teams (DRAT).

The State Director will deploy DRATs on a continuing basis to monitor debt restructuring processing activities in order to minimize processing errors, especially in calculating net recovery and write-down calculations and eligibility determinations. Such teams will be composed of State Office Farmer

Programs Staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and Auditors from the Office of Inspector General if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Offices. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure. The Assistant Administrator, Farmer Programs will monitor States quality control procedures.

#### §§ 1951.919-1951.949 [Reserved]

#### § 1951.950. OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0133.

#### FmHA Instruction 1951-S

#### Exhibit A.—Notice of the Availability of Loan Service Programs For Delinquent Farm Borrowers

##### Note to County Supervisor:

This Exhibit will be sent to all borrowers who are at least 180 days behind schedule on their former program payments.

See § 1951.907 (a), (b) and (f).

Dear (Borrower's Name):

This notice is to inform you that you are seriously behind with your loan payments and to inform you of your options. Farmers who are more than 180 days late in making payments have several options.

##### I. Loan Service Programs Available

Primary loan service programs are intended to help change the debt so that you can continue farming and the FmHA will lose less on the money it loaned you.

Preservation loan service programs are intended to help farmers who may lose their land to FmHA to get their farmland and their home back through a lease with an option to buy.

##### II. Application Information

##### Time Limits

You must notify FmHA within 45 days of getting this notice if you want these loan service programs.

##### How to Apply

Complete and return all the forms you get with this notice, including the signed Borrower Acknowledgement of the Notice of Availability of Primary and Preservation

Loan Service Programs, within the 45-day time limit.

##### How Soon Will You Know if You Qualify

FmHA has 60 days to process your completed forms and let you know if you qualify.

##### Included With This Notice You Will Find:

(1) A summary of primary loan service programs options.

(2) A summary of preservation loan service programs.

(3) Copies of the forms you need to apply for services.

(4) Information on how to get copies of FmHA regulations.

(5) A description of the FmHA appeals process.

##### III. Foreclosure and Liquidation

##### What Happens if You Do Not Apply Within 45 Days?

FmHA will take steps to begin the acceleration of your loan. Acceleration of your loan is very severe. This means FmHA will take legal action to collect all the money you owe them.

FmHA will start foreclosure proceedings. They will repossess or take legal action to take any real estates, personal property, crops, livestock, equipment, or any other assets in which FmHA has a security interest. FmHA will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. FmHA may also take by administrative offset money which other federal agencies owe you.

Sincerely,

County Supervisor,  
Farmers Home Administration,  
United States Department of Agriculture

#### Attachment 1—Primary and Preservation Loan Service Programs Purpose

##### Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to either monetary or non-monetary default.

See § 1951.907 (a), (b), (e), (f) and (g).

##### Purpose

These loan service programs are to help you repay the loan and keep your farm property. This notice tells you:

(1) How to get more information

(2) How to apply

(3) Your appeal rights if you apply and are turned down

##### How to Get More Information

Ask at any county FmHA office for copies of the FmHA rules describing these programs. These rules must be given to you within 10 days.

##### Who Can Apply?

All "farmer program borrowers" who have one of the following loans:

Operating (OL)

Farm Ownership (FO)

Emergency (EM)

Economic Emergency (EE)

Soil and Water (SW)

Recreation

Special Livestock

Rural Housing Loans made for farm service buildings

Economic Opportunity



**You May Need Help in Applying.**

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension what services are available in your state.

**Note.**—FmHA County Supervisors cannot recommend a particular attorney or organization.

**I. Primary Loan Service Programs****(1) Loan Consolidation**

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans and farm ownership loans with farm ownership loans.

**(2) Loan Rescheduling**

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years. When a loan is rescheduled, the interest rate may be reduced.

**(3) Loan Reamortization**

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

**(4) Interest Rate Reduction****Regular Interest Rate**

FmHA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the government to borrow money. Each type of loan will have a regular rate.

**Limited Resource Interest Rate**

If you have an operating loan (OL) or a farm ownership (FO) loan, it may be possible for you to get "limited resource loan interest rate." For OL loans, the limited resource loan rate is 3 percent below the regular rate. For farm ownership loans, the limited resource loan rate is between 5 percent and an amount that depends on what it costs the government to borrow money.

**Interest Rate for Loan Servicing**

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for the type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL or FO loans.

For information about current interest rates, contact the county FmHA office.

**(5) Loan Deferral**

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the delay period.

The interest rate on a deferral loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the delay period will not be added to the principal of the loan. You must pay this interest in equal yearly payments for the rest of the loan term.

**Note:** You can only get a loan deferral if the FmHA decides options 1-4 will not work for you.

**Note:** FmHA Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to \$1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

**Note:** Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture. The Secretary will reduce the debt by the value of the land or by the difference between the value of the land and the amount you owe, whichever is larger. The amount of land left after the set aside must be enough to continue the farming operation.

**(6) Debt Write-Down**

This means the debt you owe is reduced. FmHA can reduce both the principal and interest of the debt. The debt can be reduced to the recovery value of the property mortgaged to FmHA to get the loan. This property is called collateral. The recovery value is the value of the collateral minus all of the attorney, management, resale, and other expenses FmHA would have if they foreclosed on and sold the collateral. These expenses include payments on other loans against the collateral that FmHA would have to pay if it foreclosed and sold the collateral. The value of the collateral must be decided by a qualified appraiser.

In order to get debt write-down, you must show that you will have enough money to pay all of your living and farming operating expenses and scheduled debt payments. This includes making payments on the FmHA loan once part of the loan is written down. This means you must show that you have a feasible plan of operation. FmHA will never write down more of the debt than is necessary for you to show a feasible plan.

The write-down is used only when the loan servicing programs listed in programs 1-5 above alone will not be enough for you to show a feasible plan. If you get loan servicing, some of the principal and interest on your loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1-5 above.

**II. Who Can Qualify for Primary Loan Service Programs**

To qualify you must prove that:

(1) You cannot repay your FmHA debt due to circumstances beyond your control. This means that you have had less money than expected due to such things as:

- (a) A natural disaster, weather, or insect problems,
- (b) Family illness or injury,
- (c) Loss or reduction of off-farm income,
- (d) Disease in your livestock,
- (e) Low commodity prices and high operating expenses in your local area, or
- (f) Other circumstances beyond your control; and

(2) You have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

**Who Will Decide if You Qualify?**

The FmHA County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA would get if they foreclosed and sold the collateral for the loan. To do this, the County Supervisor must decide whether you can pay at least as much as the "recovery value" explained above.

**How Soon Will You Know?**

Within 60 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

**Can You Get Your Debts Written Down?**

Only if FmHA will get as much or more by writing down part of your debt than it will get if it forecloses and sells the collateral for the loan.

**Conditions of the New Agreement if You Qualify**

You must sign a shared application agreement. The agreement asks you to:

- Repay a part of the sum written down.
- The amount depends on how much your real estate collateral increases in value.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA will ask you to repay part of the debt it wrote down if you do one of the following things:

- (1) Sell or convey the real estate.
- (2) Stop farming.
- (3) Pay off the entire debt.

If you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years.

FmHA can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, it will ask you to pay only 50 percent of the increase in value. However, FmHA can never ask you to pay more than the amount of the debt they wrote down.

**Mediation of Other Loans**

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FmHA will help you try to get your other creditors to adjust your debts. This will be done by FmHA asking for mediation if your state has a mediation program approved by the Department of Agriculture. If there is no state mediation program, FmHA will try to set up a meeting with your other creditors and suppliers.

**Date to Begin Agreement**

If you are found eligible, you will be informed of the date for an appointment so your debt can be adjusted. You must notify FmHA that you accept its offer to restructure your debt within 45 days of when you receive the offer.



**III. Preservation Loan Service Programs****Purpose**

These programs apply when the primary loan service programs cannot help you.

**Programs Available**

(1) Homestead Protection. (Keeping your farm home.) You may keep or purchase or lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.

(2) Farmland Leaseback/Buyback. You can either lease the entire farm back or buy it back from FmHA.

**IV. Who Can Qualify for Homestead Protection?**

(1) Your gross annual income from your farm and/or ranch must be similar to other comparable operations your size in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for the 6 years immediately before your application. This rule can be waived if you had to leave for less than 12 months and you had no control over the circumstances.

(4) If FmHA has already taken your property, you must apply with 90 days of the date FmHA took your property. (FmHA must notify you within 30 days of taking your property.)

**How to Lease Your Dwelling**

(1) You may lease your home and up to 10 acres if you pay FmHA reasonable rent. The rent prices FmHA charges you must be similar to comparable property in your area.

(2) You must maintain the property in good condition.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FmHA, FmHA will evict you and force you to leave. Before FmHA forces you to leave, they must let you appeal. FmHA must also follow the laws of your state.

**NOTE:** You can buy back your property at current market value at any time during the lease. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection.

**V. How to Lease Back or Buy Back Farmland Property**

Under certain conditions you may lease or buy back your entire farm. You can apply for the leaseback or buyback before FmHA gets title to your land, and you can apply after FmHA takes title.

**How Long Do I Have to Decide?**

If FmHA takes your farmland, you will have 180 days after FmHA takes it to apply to purchase or lease your property. (Some states give you a longer time period.)

**Who Can Apply to Buy or Lease Back?**

(1) Buyback or leaseback rights apply to you, your spouse, or your children if they also have been actively involved in farming.

(2) Members of family-held corporations if the corporation had the loan from FmHA.

(3) Members of partnerships or joint operations who were responsible to pay the FmHA loan.

**Note:** You must notify your family of their right to lease or buy back. Your spouse and your children's rights exist only if FmHA takes the property into inventory.

**Order of Rights to Buy or Lease Back**

(1) The former owner has first right. His/her right to be considered will last for 180 days from the time FmHA gets title to the land.

(2) The owner's spouse or children or stockholders in family farm corporations. Their right to be considered will last for 10 days after the owner's ends.

(3) The operator, if he/she is not owner of the property and was operating the property when FmHA took it into inventory.

(4) Operators of family-size farms.

**Note:** If the land is on an Indian reservation and was owned by a tribe member, FmHA will make special offers to tribal members. FmHA will do this after the time period for owner/operator buyback has passed.

**Who Can Qualify for Buybacks Financed by FmHA or Leasebacks?**

(1) You must have enough financial and management skills to show you will be successful in the farming operation.

**Note:** If you get financing from someone other than FmHA, you do not need management skills.

(2) You must give FmHA a farm plan that shows you have a reasonable chance of being successful.

(3) The rent price must be based on reasonable rent for the same type of property in your area.

(4) The purchase price for the farmland must not be more than a price that reflects the amount of money you can make from the land by farming it. FmHA calls this the capitalization value.

**VI. How to Apply for Primary and Preservation Loan Servicing**

Forms to apply to primary and preservation programs

These forms should be included with this notice. If they are not, you can get these from your county office or as directed below.

**Form number and title**

(1) FmHA 410-1—Application for FmHA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA debt.)

(2) FmHA 410-8—Application Reference Letters

(3) FmHA 410-9—Statement Regarding Privacy Act

(4) FmHA 431-2—Farm and Home Plan

(5) FmHA 440-3—Request for Statement of Debts and Collateral

(6) FmHA 1910-5—Request for Verification of Employment

(7) FmHA 1924-1—Development Plan (if you are planning to make major changes in your farming operation)

(8) SCS-CPA-28—Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)

(9) Ad 1026—Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)

**Note:** For Homestead Protection only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm. Show the homestead site you wish to apply for.

**Note:** For Conservation Easement only, get the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

**Time to Apply**

You must complete all of these forms and get them to the FmHA office within 45 days from the date you received this notice. FmHA will not consider you for the loan service programs until it gets all of these completed forms.

**VII. What Happens When You Are Not Eligible for Primary Loans Service Programs?**

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her why. If you can make the necessary changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the County Supervisor.

**You have the Right to Appeal.**

(1) Appeal Hearing. If you do not convince the County Supervisor that you should get primary loan servicing, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA questions at the hearing. The appeal hearing is recorded, you can get a copy of the transcript of the hearing if you pay for the copying costs.

(2) Review. If you do not win at the appeal hearing, FmHA must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.

(3) Independent Appraisal. You may ask for an independent appraisal of your property in which FmHA has a security interest. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three names of appraisers. You must choose one of the three to do the independent appraisal.



### You May Pay Off Your Loan at the "Recovery Value."

(1) **Recovery Value.** If the analysis of your debt shows that you cannot "cash flow" even if your debt to FmHA is reduced to the net recovery value of the collateral, the County Supervisor will send you a letter saying you can pay off the loan by paying the "recovery value" of the land and property used to secure the loan. The letter will tell you the "recovery value."

The "recovery value" is figured by subtracting from the fair market value of the collateral property all expenses FmHA would have to pay if it foreclosed and sold your property. These expenses include paying off other creditors who have an earlier security interest in the collateral, attorneys fees, administrative and management expenses, and taxes.

(2) **Time Limit.** If you want to pay off the loan at "recovery value," you must pay FmHA within 45 days of the date you receive the letter. If you appeal, the County Supervisor's decision not to give you primary loan servicing, this 45 days will not start until all of the appeals end.

(3) **Cash.** If you pay off the loan, you must pay in cash.

### Consideration for Preservation Loan Service Programs.

You will be considered for preservation loan service programs if:

(1) You do not appeal or do not win your appeal, and.

(2) You do not pay off the loan at recovery value.

FmHA will consider you for preservation loan service programs after the 45-day time period you have to pay off the loan at recovery value.

Consideration for homestead protection and/or farmland leaseback/buyback. You will be considered for preservation loan service programs if you:

(1) Meet the conditions described above, and

(2) Agree to give FmHA title to your land at the time FmHA signs the written dwelling retention and/or farmland leaseback/buyback agreement with you. The written agreement will include the amount you must pay for rent, the number of years you can rent, and an option to buy.

FmHA may consider you for homestead protection and farmland leaseback/buyback on you real estate and, at the same time consider you for buyback of your equipment and any other non-real estate collateral at market value.

### VIII. What Happens When You Are Turned Down for Preservation Loan Service Programs?

#### You Can Appeal

If FmHA decides that you cannot get homestead protection and/or farmland leaseback/buyback, you can ask for:

(1) A meeting with FmHA to discuss the decision, and

(2) An appeal hearing.

#### The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA decided not to

give you homestead protection or farmland leaseback/buyback. That letter will give you 15 days to ask for a meeting with FmHA.

#### The Right to an Appeal Hearing

If you do not convince FmHA at the meeting to give them to you, FmHA will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback.

#### The Right to a Review

If you do not win the appeal hearing, FmHA must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

### IX. What Happens if You Do Not Win the Appeal for Preservation Loan Service Programs?

FmHA will accelerate your loan account and call in the whole debt. They will stop allowing you to use any of your crop, livestock, and milk checks on which they have a claim to pay for living and operating expenses. They will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration FmHA may also take money by administrative offset, that is, money which other Federal Government agencies owe you.

FmHA will take this action unless you do one of the following things:

(1) Sell all the collateral for the loan at market value

(2) Convey (legally transfer) the collateral to FmHA

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you can apply for a debt settlement so that you will no longer be personally liable for your FmHA debt. You may re-apply for homestead protection and farmland leaseback/buyback if FmHA takes your land or home. You may reapply for these programs, even if you applied before and did not get one of these programs and were not successful on appeal.

#### Attachment 2

##### Note to County Supervisor:

This attachment will be provided to every borrower who requests, Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to monetary default.

See § 1951.907(a), (b), (c), (d) and (f).

#### Acknowledgement of Notice of Program Availability

I/We have been given a notice explaining the primary loan service programs and the preservation loan service programs.

The date on the notice was \_\_\_\_\_

This notice explained that FmHA programs are available to help me keep my property.

I/We ask FmHA to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA decides on my request.

Signature \_\_\_\_\_

Date \_\_\_\_\_

#### Attachment 3

##### Note to County Supervisor:

This attachment will be used to notify borrowers with non-monetary defaults, borrowers with both non-monetary and monetary defaults, and borrowers where a prior or junior lienholder is foreclosing.

See § 1951.907(g).

##### Notice to Borrowers With Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or That a Prior Lienholder or Junior Lienholder is Foreclosing

Dear (Borrower's Name):

FmHA has reviewed your loan account.

Our record shows:

☐ You are now \$ \_\_\_\_\_ behind on your payments. This is a violation of your loan agreement.

☐ You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is \$ \_\_\_\_\_

(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ A foreclosure action has been filed against you by \_\_\_\_\_. This is a violation of your loan agreement.

☐ You have \_\_\_\_\_

(Insert reasons for proposed action.)

#### FmHA Will Accelerate Your Loans

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They may take by administrative offset money you are owed by other Federal agencies. They may take money owed you through lawsuits or any other unpaid loans.

#### Steps You Can Take Before FmHA Accelerates Your Loans

You can apply for the loan servicing programs described in Attachment 1. These are called Primary and Preservation Loan Service Programs.

#### Forms Attached to This Notice

You will find:

- 1) A summary of all primary loan service programs;
- 2) A summary of preservation loan service programs;
- 3) Copies of the forms needed to apply;
- 4) Advice on how to get copies of FmHA regulations;
- 5) A short description of the FmHA appeal process.

#### Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.



**How to Apply for Loan Servicing**

Complete Attachment 4 and the forms included with this notice.

You must return these within 45 days of getting this notice.

**Right to a Meeting**

You have the right to meet with your FmHA County Official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the "Response to Notice of Intent to Accelerate and Notice of Borrower Rights.")

**How to Ask for a Meeting**

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your County Office. Do this as soon as possible. It is wise to call also to set up the meeting.

Note: If you ask for loan servicing, the request will be delayed until a decision on your loan servicing request is made.

**The Right to Appeal**

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs.

**How to Ask for an Appeal**

Check the box on Attachment 4 and mail it to your County Office within 30 days of getting this notice.

Note: If you do not check the box on the Attachment 4 to ask for Primary and Preservation Loan Servicing you will not be considered.

If you do not ask for a meeting you will not get one.

You may still appeal by asking for an administrative appeal on the attached form.

**The Right Not to Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,

Farmers Home Administration,

United States Department of Agriculture.

Date: \_\_\_\_\_

**Attachment 4**

Note to County Supervisor:

This attachment will be included with attachment 3 when contacting a borrower about non-monetary default, non-monetary default and delinquency, and when a prior or junior lienholders is foreclosing.

See § 1951.907(g).

**Response to Notice Informing Me of FmHA's Intent to Accelerate My Loan****Notice of My Rights**

TO: County Supervisor, Farmers Home Administration

FROM: \_\_\_\_\_

(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate my loan which I received with this form.

I want to:

- ☐ 1. Request a meeting with the FmHA County Office.

My phone number is \_\_\_\_\_

I must return this form in 15 days.

I understand I do not lose my right to appeal by asking for a meeting.

- ☐ 2. Be considered for all primary and preservation loan programs.

I must return this form in 45 days.

- ☐ 3. Have an administrative appeal hearing. I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and give me more information.

I must return this form in 30 days.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign here.)

**Attachment 5**

Note to County Supervisor:

This attachment is used when notifying borrower who returned attachment 2 of Exhibit A, that FmHA cannot provide the assistance requested with the Primary Services Programs.

See § 1951.909(h)(3)(i) and (ii).

Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights

Name and Address

(Dear (Borrower's Name): You are not eligible for debt restructuring.

- I. ☐ FmHA has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA at least

\$\_\_\_\_\_ per year.

Note: The attached computer printout which summarizes FmHA's calculations based on your application.

- II. ☐ FmHA has reviewed your application and your case file. You have broken your agreement with FmHA. Your Farm and Home Plan shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt payments if FmHA uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have broken your loan agreements with FmHA.

You have broken loan agreements with FmHA in the following way:

- ☐ You are \$\_\_\_\_\_ behind in your scheduled loan payments.

- ☐ You have sold or gotten rid of property you used to secure the FmHA loan without proper approval from FmHA. This property is \_\_\_\_\_

(Describe property.)

- ☐ You have stopped farming or ranching.  
☐ You have \_\_\_\_\_

**III. FmHA Intends to Foreclose**

FmHA will accelerate your loan because you are not eligible for primary loan servicing.

FmHA will take legal action to collect the money you owe.

FmHA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA loan;

(2) Foreclose and sell your real estate mortgaged to FmHA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FmHA.

**IV. WHAT YOU CAN DO TO STOP FORECLOSURE**

Before FmHA can take action against you, you can:

- (1) Request a meeting with the FmHA county official.

If you disagree with FmHA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA official. The county official can explain the FmHA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section 1.

To ask for this meeting, check the box #1 on the "Response Form" (Attachment 6).

Time Limit: You must return the "Response Form" to the county FmHA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

- (2) Request an Appeal Hearing.

You may also request an appeal hearing to contest FmHA's decision. At the hearing you may challenge the ways FmHA says you broke your loan agreements. You may also challenge FmHA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA believes you cannot present a feasible plan.

You can appear at the appeal hearing and present witnesses and documents to support your position.

You may also ask for an independent appraisal of your property used to secure the FmHA loan. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this



appraisal. FmHA will give you three names of appraisers to choose from. Check box # 3 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FmHA county official, you will be given a chance to appeal after this meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed "Response Form."

You may request both the meeting and the appeal hearing on the "Response Form." Check box # 2 on the "Response Form" to request an appeal hearing. If you ask for just the appeal hearing, you must return the "Response Form" to FmHA within 30 days of the date you received the letter.

(3) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restricted loan.

You [may] or [may not] buy out your FmHA loan(s) at the "recovery value" of the property securing the loan. The recovery value is \$\_\_\_\_\_. The restricted loan(s) value is \$\_\_\_\_\_.

Note: The attached computer printout which summarizes FmHA's calculations.

If you are eligible and pay the recovery value, FmHA will write off the rest of your debt. If you are eligible to pay the recovery value, FmHA will require you to sign a recapture agreement. This agreement would allow FmHA to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 2 years of the agreement. FmHA can never recapture more than it wrote off.

Time limit. If you are eligible and want to buy out your loan(s) at the recovery value, you must pay FmHA within 45 days from the date you received this letter. You must pay FmHA in cash, money order, or certified check.

If you appeal FmHA's decision, the 45-day period to buy out at recovery value will not start until all of the appeals are completed. Check box # 4 on the "Response Form" if you want to buy out at recovery value.

(4) Consider for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructuring).] FmHA will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

Note to County Supervisor.

<sup>1</sup> Circle appropriate entry.

#### V. WHAT HAPPENS IF YOU DO NOT RESPOND?

If you do not respond to this letter by completing and returning the enclosed Attachment 6, "Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights," FmHA will accelerate or continue with acceleration of your FmHA debts. This is very severe action

FmHA will take any of the actions listed in Section III above to collect on your debt.

The Right Not to Be Discriminated Against Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,

Farmers Home Administration, United States Department of Agriculture.

#### Attachment 5

Note to County Supervisor:

This attachment will always be sent with Attachment 5.

See § 1951.909(h)(3)(i) and (ii).

Response to Notice Informing Me of FmHA's Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: \_\_\_\_\_

(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate or continue with acceleration my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

☐ 1) Request a meeting with the FmHA county official.

My current telephone number is \_\_\_\_\_.

I understand that I do not lose my appeal rights by asking for this meeting.

☐ 2) Request an appeal hearing.

I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and to give me more information.

☐ 3) Request that an independent appraisal of my property that secures the FmHA loan(s).

I understand that I must pay for this appraisal. I understand that the appeal hearing officer will give me the names of three appraisers, from which I must choose one.

☐ 4) Buy out my loan(s) at the recovery value.

I understand that I must pay FmHA \$\_\_\_\_\_ in cash, certified check, or money order. I understand that I must pay this to FmHA within 45 days of the date I received this letter or, if I appeal, I must pay within 45 days from the end of the appeal. I understand that if I pay this amount FmHA will write off the rest of my debt.

Borrower's signature \_\_\_\_\_

Date \_\_\_\_\_

#### Attachment 7

Note to County Supervisor:

This attachment will be used to advise borrowers whose accounts have been accelerated but who DID NOT return attachment 2 of Exhibit A, that FmHA intends to continue acceleration of their accounts.

See § 1951.907 (a) and (b).

#### Notification of Continued Acceleration of Loans and Notice of Borrowers' Rights

FmHA will continue to accelerate your loan.

You can:

(1) Ask to sign over to FmHA all the property you used to secure your loan. FmHA will release you from liability when the debt is settled.

(2) Ask for a leaseback or buyback of your farm real estate once FmHA has taken it by you signing it over or foreclosure.

(3) Ask to keep your home after FmHA has taken it.

(4) Ask to pay in full within 30 days.

Dear (Borrower's Name):

FmHA intends to continue to accelerate your loan.

FmHA will take legal action to: foreclose on real estate; repossess personal property; take by administrative offset any money you are owed by other Federal agencies.

#### How to Avoid Foreclosure

You can avoid foreclosure by:

Voluntarily signing over property you used to secure your loans to FmHA. FmHA will decide if it is to the government's financial advantage to let you do this. You must ask for a meeting with County Office staff in 15 days to discuss if your debt can be settled this way.

Note: Voluntarily signing over, or foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on \_\_\_\_\_. If you did not get these forms, contact your County Office within 15 days of this notice.]

What Happens If You Do Not Respond to This Notice

If you do not respond to this notice by asking for a meeting in 15 days, FmHA will take the legal action described above to foreclosure, or repossess your property.

#### Amount Owed:

You owe:

\$ \_\_\_\_\_

unpaid principal

\$ \_\_\_\_\_

unpaid interest

plus

\$ \_\_\_\_\_

per day interest for each day after

(Date)

plus

\$ \_\_\_\_\_

advance made by the U.S. Government.

Time Limit:

You must pay all of your debt within 30 days of the date on this notice. This can be avoided if you sign over your property.



**How to Pay**

Cashiers' check, certified check, or postal money orders made payable to:  
Farmers Home Administration at

Street address or P.O. box

City

State

**Zip**

Part payment will not be enough to stop FmHA taking legal action. FmHA still has full legal rights to continue the legal action just as if no payment had been made.

☐ The FmHA plans to go ahead with foreclosure on your property without court action. Public sale will be after

(Date)

☐ The FmHA plans to go ahead with foreclosure on your property after court action.

Sincerely,

County Supervisor  
Farmers Home Administration  
United States Department of Agriculture

**Your Right Not to Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

**Attachment 8****Note to County Supervisor:**

This attachment will always be sent with Attachment 7.

See § 1951.907 (a) and (b).

**Response to Notice Informing Me of FmHA's Intent to Continue to Accelerate My Loan****Notice of My Rights**

TO: County Supervisor, Farmers Home Administration

From:

Please print your name and address.

I have read and considered the notice informing me of FmHA's intent to continue to accelerate my loan.

I want to:

☐ (1) Request a meeting with the FmHA County Official to discuss signing over my property used to secure my loan to FmHA to settle my debt.

My phone number is \_\_\_\_\_  
I must return this form in 15 days.

☐ (2) Be considered for preservation loan programs.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 9****Note to County Supervisor:**

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated. WHO DID NOT return attachment 2 of Exhibit A.

See § 1951.907(h)(2).

**Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights**

FmHA will accelerate your loan because you have not asked for primary loan service programs or debt restructuring.

You can:

(1) Ask for a meeting with your County Official.

(2) Appeal FmHA's decision.

(3) Ask to voluntarily sign over to FmHA the property used to secure your loan and ask to be released from your debt.

(4) Apply to a leaseback or buyback of your farm real estate once FmHA has taken it.

(5) Ask to keep your home after the FmHA has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA, and a review of your account shows:

☐ You are \$ \_\_\_\_\_ behind in your FmHA loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property used to secure your FmHA loan. Your did not get written approval for this.

The property is \_\_\_\_\_

(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have \_\_\_\_\_

(Insert reason for proposed action.)

**FmHA Will Accelerate Your Loans.**

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

**Steps You Can Take Before FmHA Accelerates or Continues Acceleration of Your Loans.**

(1) Right to a meeting. You have the right to meet with your FmHA County Official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your County Office. Do this as soon as possible.

(2) The Right to Appeal. You can ask for an administrative appeal before a hearing officer. Your can contest FmHA's decision to accelerate or continue acceleration of your loan. You can ask for an independent

appraisal of the value of your land. You will have to pay for this appraisal. FmHA will give you three names of approved appraisers to choose from. Check box 4 if you want an independent appraisal. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. You can ask for an appeal if you do not have a meeting.

How to Ask for an Appeal. Check the box on Attachment 10 and mail it to your County Office within 30 days of getting this notice.

**What Happens If You Do Not Respond?**

If you do not respond to this notice by filing out Attachment 10, FmHA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on \_\_\_\_\_.

If you did not get these forms, contact your County Office within 15 days of this notice.]

**The Right Not to Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor,  
Farmers Home Administration,  
U.S. Department of Agriculture

Dated: \_\_\_\_\_

**Attachment 10****Note to County Supervisor:**

This attachment will always be sent with Attachment 9.

See § 1951.907(h)(2).

**Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue to Accelerate My Loan****Notice of My Rights**

TO: County Supervisor, Farmers Home Administration

FROM: \_\_\_\_\_

(Please print your name and address.)

I want to:

☐ (1) Request a meeting with the FmHA County Official. My telephone number is \_\_\_\_\_. I understand I do not lose my right to appeal if I ask for a meeting.

☐ (2) Voluntarily sign over to FmHA all the property used to secure my loan and settle my debt.

☐ (3) Request an administrative appeal. I understand that I will be contacted by an official of FmHA's National Appeals Staff to set up an appeal hearing and give me more information.

☐ (4) Request an independent appraisal of property securing my loan(s). I understand



I must pay for this appraisal. I understand that the hearing officer from the National Appeals Staff will give me names of three appraisers.

☐ 5) Preservation loan service programs.

Signed \_\_\_\_\_

Date \_\_\_\_\_

### Exhibit B.—Noncash Credit for Farmer Program Loan When Establishing Recapture Receivable

In accordance with FmHA Regulation 1951-S, "Farmer Program Account Servicing Policies," 1965-A, "Servicing of Real Estate Security for Farmer Program Loans and certain Note-Only Cases," we have granted this borrower a noncash credit for the Farmer Program loan(s). In consideration for this noncash credit an equity receivable account will be established in accordance with the attached Net Recovery Buy Out Recapture Agreement, Shared Appreciation Agreement, or Equity Recapture Agreement signed by the borrower.

1. Borrower Name \_\_\_\_\_  
 2. Case Number \_\_\_\_\_ :0: \_\_\_\_\_  
 3. Fund Code : \_\_\_\_\_  
 4. Loan Number : \_\_\_\_\_  
 5. Date of Loan : \_\_\_\_\_  
 6. Loan Balance : \_\_\_\_\_  
 7. Market Value : \_\_\_\_\_  
 8. Net Recovery Value : \_\_\_\_\_  
 9. Write Down Amount : \_\_\_\_\_  
 10. Equity Recapture Account Amount \_\_\_\_\_  
 11. Effective Date of Write Down \_\_\_\_\_

Date prepared \_\_\_\_\_

Signature of Servicing Official  
 Procedure Reference: FmHA Instructions 1951-S and 1965-A.

Prepared by: County Supervisor.  
 Number of Copies: Original and Three Copies.

Signatures Required: Original Signed by appropriate officials; copies confirmed.

Distribution of Copies: Original Signed Agreement attached to the appropriate promissory note to the borrower's case file; a copy of the agreement retained in a temporary file for future processing via field office terminal system; copy to State Director; copy for borrower.

### Instruction for Preparation

This exhibit is used to record the granting of noncash credit for farmer program loans when establishing equity recapture receivable. Complete one form per equity recapture account:

Item 1. Enter the borrower's name.  
 Item 2. Enter the borrower's case number. Indicate all leading zeros.  
 Item 3. Enter the fund code of the single family housing loan from which the equity recapture amount was obtained.

Item 4. Enter the loan number of the loan from which the equity recapture the equity recapture amount was obtained.

Item 5. Enter the date of the loan.

Item 6. Enter the total unpaid balance of the loan as of the effective date of the agreement.

Item 7. Enter the market value.

Item 8. Enter the value of the loan as if FmHA were to go through liquidation procedures.

Item 9. Enter the write down amount. The write down amount is the difference between the loan balance and the net recovery value.

Item 10. Enter the equity recapture account amount. The equity recapture account amount is the lesser of the difference between the loan balance and the net recovery value, or the difference between the market value and the net recovery value.

### Example A

Debt Outstanding.....\$120,000  
 Market Value.....100,000  
 Net Recovery Value.....75,000  
 Equity Recapture Account Amount.....25,000  
 Write Down Amount.....45,000

### Example B

Debt Outstanding.....\$100,000  
 Market Value.....120,000  
 Net Recovery Value.....75,000  
 Equity Recapture Account Amount.....25,000  
 Write Down Amount.....25,000

Item 11. Enter the effective date of the write down.

### Exhibit C—Net Recovery Buy Out Recapture Agreement

In consideration of the Farmers Home Administration (FmHA) allowing me/us to purchase the real estate property securing my/our FmHA Farmer Program loan obligations at the net recovery value of \$\_\_\_\_\_ in accordance with FmHA Instruction 1951-S, I/we agree to pay to difference between the net recovery value of the security of \$\_\_\_\_\_ and the fair market value of the real estate property of \$\_\_\_\_\_ as of the date of this agreement, if/we sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is \$\_\_\_\_\_. I further agree to give FmHA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FmHA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I/we do not sell or convey the property during the two year period.

I/We understand that the difference between the net recovery value of the real estate securing the FmHA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I/we sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I/we realize a gain in this transaction.

Loan Balance \$ \_\_\_\_\_  
 Amount of Buyout \$ \_\_\_\_\_

Date of Agreement \_\_\_\_\_

Borrower \_\_\_\_\_

### Exhibit D—Shared Appreciation Agreement

This Agreement is entered into between (FmHA) and (Borrower's name) (called "Borrower") on (Date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to FmHA for loan(s) as evidenced by the note(s) described below:

Date \_\_\_\_\_  
 Principal Amount \_\_\_\_\_  
 Interest Rate \_\_\_\_\_  
 Due Date \_\_\_\_\_

This Agreement is attached to the note(s) described above. As of the date of this Agreement, before write-down, the unpaid principal balance on this note was \$\_\_\_\_\_ and the unpaid interest balance was \$\_\_\_\_\_. These note(s) were modified by the following note(s) which are attached to note(s) described above.

Date \_\_\_\_\_  
 Principal Amount \_\_\_\_\_  
 Interest Rate \_\_\_\_\_  
 Due Date \_\_\_\_\_

The note(s) described above are secured by the following real estate security instruments:

Grantor \_\_\_\_\_  
 Date of Security Instrument \_\_\_\_\_  
 Records of County/State \_\_\_\_\_  
 Book or Reel \_\_\_\_\_  
 Page \_\_\_\_\_

As a condition to, and in consideration of, FmHA writing down the above amounts and restructuring the loan, Borrower agrees to pay FmHA an amount according to one of the following payment schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by FmHA will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into. If the borrower violates the term of this agreement, FmHA will liquidate after the borrower has been notified of the right to appeal.

Market value of the property securing loan(s) \$ \_\_\_\_\_



Net recovery value of property securing loan(s) \$ \_\_\_\_\_  
 Amount of write-down \$ \_\_\_\_\_  
 Amount of Account Equity \$ \_\_\_\_\_

(Borrower's signature)

(Farmers Home Administration)

**Exhibit E.—"Notification of Request for Mediation or Meeting of Creditors"**

(TO BE USED BY FmHA TO INFORM BORROWERS THAT FmHA IS REQUESTING MEDIATION OR A VOLUNTARY MEETING OF THE BORROWER'S CREDITORS)

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FmHA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FmHA debts to make an annual payment to FmHA of at least \$ \_\_\_\_\_. Your Farm and Home Plan shows that you have only \$ \_\_\_\_\_ to make this annual payment. Attached are the calculations on which our decision is based.

(Use the appropriate following paragraph.)

Paragraph 1

(To be used when Certified State Mediation is available)

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least \$ \_\_\_\_\_, FmHA will reconsider your application for primary loan servicing.

Paragraph II

(To be used when Certified State Mediation is not available)

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FmHA State Director will contract for a mediator or appoint an FmHA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Please sign the attached acknowledgment within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FmHA releasing information concerning your account to other creditors who participate in the meeting.

Note to County Supervisor

Send Attachment 1 to Exhibit E with Paragraph II only.

If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least \$ \_\_\_\_\_,

FmHA will reconsider your application for primary loan servicing.

Sincerely,

COUNTY SUPERVISOR

**Attachment 1.—Borrower's Request for Meeting of Creditors and Acknowledgment**

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA has told me that due to my/our debt with other lenders it does not believe I/we can develop a feasible plan. I/we request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I/we consent to FmHA releasing information concerning my/our FmHA account(s) to these creditors to assist me in developing a feasible plan.

(Date)

(Borrower's signature)

**Exhibit F.—Notification of Offer to Restructure Debt**

(TO BE USED BY FmHA TO OFFER TO RESTRUCTURE THE BORROWER'S DEBT)

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA debt in the following fashion:

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account.) For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that (\$ Amount) of principal and interest on that loan would be written off, and the remainder of the loan would be reamortized for 40 years from the original date of the loan, or up until (date) at the limited resource interest rate, which is \_\_\_\_\_ percent, in exchange for the borrower signing a shared appreciation agreement, which is attached to the notice.)

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

If you do not accept this offer, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this

action and give you the opportunity to appeal.

**YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FmHA RESTRUCTURES YOUR FmHA INDEBTEDNESS WITH A WRITE-DOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION ON THIS MATTER.**

Sincerely,

COUNTY SUPERVISOR

**Attachment 1.—Acceptance of Offer To Restructure My Debt**

TO: County Supervisor, Farmers Home Administration

FROM: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA debt.

I would like to accept that offer.

Sincerely,

(Borrower's signature)

(Date)

**Exhibit G.—Deferral, Reamortization and Reclassification of Distressed Farmer Program (FP) Loans for Softwood Timber Production (ST) Loans**

I. General.

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA borrowers to improve their financial condition, to repay their outstanding FmHA debts in an orderly manner, to carry on a feasible farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) *Management assistance.* FmHA management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordance with Subpart B of Part 1924 of this chapter.

(B) *Definitions.*

(1) *Distressed FmHA loan.* An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) *Marginal land.* Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in § 12.2 of Subpart A of Part 12 of this chapter and which is



Attachment 1 of Exhibit M of Subpart 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under § 12.2 of Subpart A of Part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Class IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in § 12.2 (a)(26) of Subpart A of Part 12 of this chapter and which is Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(3) *Softwood timber.* The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(c) *ST loan eligibility.* A borrower must:

- (1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

- (2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

- (3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

- (4) Be an FmHA FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

- (5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

- (6) Have one or more distressed FmHA loans as defined by this exhibit.

- (7) Not have a total indebtedness of ST loan(s) that will exceed \$1,000 per acre for the marginal land at closing. Example: If 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed \$50,000 at closing.

- (8) Be able to obtain sufficient money through FmHA or other sources including cost-sharing programs for forestry purposes for the planting, caring, and harvesting of the softwood timber trees.

## II. *Reamortization requirements.*

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

- (1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by Subpart B of Part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If

a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA denial, as provided in § 1951.909(i) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this subpart.

- (2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest \$1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the \$1,000 per acre specified in paragraph I (C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

- (3) When a loan is reamortized the accrued interest more than 90 days overdue will be capitalized. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII (B) of this section. If income is available, payments will be required as determined in paragraph II (B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX (H) of this exhibit.

- (4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA 440-9, "Supplementary Payment Agreement."

- (5) Applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be cancelled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

- (D) If the total amount of the distressed FP loan(s) exceeds \$1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed \$1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA State

supplement allows otherwise. The mortgage must ensure that FmHA has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with Subpart A of Part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

## III. *Interest rate of ST loans.*

See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate (available in any FmHA office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

## IV. *Special requirements.*

(A) *Size of the timber tract.* The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) *Graduation of ST borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA request, apply for and accept such financing.

## V. *Planning.*

A farm plan will be completed as provided in Subpart B of Part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in



establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

#### VI. Distressed reamortized loan approval or disapproval.

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. "Administrative Notices" containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA Finance Office will be notified by the County Supervisor by completing Forms FmHA 1965-22 and 1965-23 for entry into the field office terminal system.

#### VII. Reamortizing disapproval.

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in § 1951.909 (i) of this subpart after the County Supervisor has determined whether the borrower is eligible for the remaining servicing programs authorized by this subpart.

#### VIII. Processing of ST loans.

(A) If the reclassified ST loan is approved, all other FmHA loans must be current on or before the date the reclassified ST notes are signed except for FmHA-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA 1940-18, "Promissory Note for ST Loans," will be used for ST loans.

Form FmHA 1940-17, "Promissory Note," will be used for any remaining portion of a split distressed loan. The forms will be completed,

signed and distributed as provided in the Forms Manual Inset.

(D) The County Supervisor will determine the amount of interest more than 90 days overdue that will be added during the deferral period for softwood timber loans. This interest will be repaid in equal payment amounts during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment amounts for the remaining period of the loan. Interest less than 90 days past due will not be capitalized or accrue interest. It will be payable at the end of the softwood deferral period. The Forms Manual Inset (FMI) for Form FmHA 1940-17 has examples (IV, V, and X) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with this subpart.

(E) The following addendum will be typed and signed by the borrower and attached to the promissory note:

#### Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated \_\_\_\_\_ in the original amount of \$\_\_\_\_\_. at an annual interest rate of \_\_\_\_\_ percent. This agreement amends and attaches to the above note. \$\_\_\_\_\_ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

#### Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA liens in accordance with paragraph II (E) of this exhibit.

#### IX. Servicing.

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in § 12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exhibit M of Subpart G of Part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with Subpart A of Part

1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. Any appeal to FmHA must be concluded before any adverse action can be taken on the loan.

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

- (1) The timber is not harvested in the year stated in the initial promissory note, and
- (2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

#### S. State supplements.

State supplements will be issued immediately and updated as necessary to implement this section.

#### Attachment 1—Notice of Availability of Option To Reamortize Certain Loans Secured by Future Revenue Produced by Planting Softwood Timber

(Used by the County Supervisor to inform borrowers of the availability of Softwood Timber Loans)

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
(Name and Address)

Dear \_\_\_\_\_:

To implement a provision in the 1985 Farm Bill, the Farmers Home Administration (FmHA) is offering the additional loan servicing option of reamortizing Farmer Program loans with repayment secured by and postponed until the harvesting of a Softwood timber crop. Eligible applicants may request or receive an operating loan to cover the actual cost of the required planting. If you are using marginal land for farming or pasture, and desire to use at least 50 acres of this marginal land to plant and produce softwood timber, contact this office within 15 days of the receipt of this letter to apply for this option so that your request can be processed in a timely manner. Please note the following limitations to this program: FmHA



must be the sole lienholder of both the land growing the softwood timber and the revenues from the timber; the total amount of loans secured by the land and softwood timber cannot exceed \$1,000 per acre; and the program is limited to 50,000 acres of softwood timber nationwide.

Sincerely,  
County Supervisor

#### Exhibit H—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements)

##### I. General.

A conservation easement will be considered with write-down as a primary loan service program in accordance with §§ 1951.906 and 1951.909 of this subpart and the requirements of this exhibit. These easements can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved and, except in the case of wetland and wildlife habitat as defined in paragraphs (a) and (d) of this section, must have been row cropped each year of a three-year period ending on December 23, 1985. This section only applies to farmer program loans closed prior to December 23, 1985. Non-program loan debtors are not eligible to receive any benefits under this section. Conservation easements do not have to result in a net recovery to the government at least equal to the recovery from liquidation. If the borrower initially declines an easement but the debt write-down program fails to establish a feasible plan, the borrower will be considered for a Conservation Easement combined with debt write-down to determine whether these options establish a feasible plan.

##### Definitions.

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) "Wetland," except when such term is part of the term "Converted wetland," is land that Soil Conservation Service (SCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) "Hydric soils" means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) "Hydrophytic vegetation" means a plant growing in—

(A) Water; or

(B) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) "Highly erodible land" is land that SCS has determined has an erodibility index of 8 or more.

(c) "Upland" is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land and/or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,  
(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,  
(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,  
(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),  
(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation easement areas,  
(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that SCS determines contains soil(s) that is generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the SCS's Land Capability Classification System.  
(d) "Wildlife habitat" is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Enforcement authority.* Any agency of the United States, a State, or a unit of local Government of a State or a person that is designated by FmHA and specified within an easement area to enforce the terms and conditions of that easement.  
(3) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by an enforcement authority to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of an easement and/or its management plan. The borrower whose land is subject to the easement may be eligible to be designated as a management authority.

(4) *Person.* Any agency of the United States, a State, a unit of local Government

within a State, or a private or public nonprofit organization.

(5) *Recreational purposes.* These activities include providing public use for both consumption (e.g., hunting, fishing) and nonconsumption (e.g., camping, hiking) recreational activities, a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise(s).

(6) *Row Cropped.* The term refers to growing agricultural products, including small grains, by the annual tilling of the land (including one trip planters and sugar cane). This farming approach refers to land that was in grasses and/or legumes as part of a commonly practiced row crop rotational system in the local area as well as land that was set aside, diverted or otherwise not cultivated under a program administered by USDA to reduce production of an agricultural product or to conserve soil and water.

(7) *Wildlife.* The term includes fish and/or wildlife and means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrae, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(8) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

##### II. Eligibility.

The following steps must be taken to determine if the borrower is eligible for a conservation easement. If the borrower is found to be ineligible, the FmHA County Supervisor will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the easement after a final decision is made on whether the borrower qualifies for any other servicing options. The County Supervisor must find that:

(1) The borrower owns real estate which secures a farmer program loan which was closed before December 23, 1985;

(2) The borrower is or would be unable to repay the FmHA loan(s) without the easement agreement. This decision will be made by the borrower's submission of a plan of operation acceptable to FmHA for the current and coming year in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(3) The establishment of the value of an easement, in terms of the approximate amount of acres that may qualify, and in combination with other servicing options, if applicable, has the potential to allow the borrower to be current in payments, i.e., the easement approach is worth exploring in further detail;

(4) The proposed easement land except in the cases of wetland and wildlife habitat was row cropped each year of the three-year period ending on December 23, 1985; and

(5) If the land being proposed for the easement is within the Agricultural Stabilization and Conservation Service (ASCS) Conservation Reserve Program, both



the requirements of that program and this section can be met.

### III. Establishing easement review team.

The County Supervisor will establish an easement review team by notifying the appropriate field offices of the Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation District, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resources Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be an enforcement authority for an easement. The notified parties may in turn notify other eligible entities. SCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the County Supervisor will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on an easement review team.

### IV. Responsibilities of the Easement Review Team.

SCS will lead the easement review team which in every case will be composed of an SCS and FmHA representative (and in the case of wetlands, the U.S. FWS), plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder(s) and the borrower will be informed of the site visit time/date and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the County Supervisor. The report will cover the items listed in paragraphs (A) through (F) of this paragraph. The report will be prepared by an organization, selected by FmHA, that has indicated its willingness to be the enforcement authority except in the instance discussed in paragraph (C) below. Whenever review team members have differing positions on any items to be addressed in the report, each team member will prepare a separate report and submit these reports to the organizations responsible for the report. These differing views will be noted in the report. When no differences exist within the review team, written summaries of team members' positions need not be submitted to the preparer of the report unless either the preparer requested them or an individual team member desires to submit a report. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, easement boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable easement boundaries or are required for the efficient management of the easement's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation and/or wildlife habitat purposes and a priority

ranking of purposes included, if the land can be so classified and ranked. First, priority will be given to land easement opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land easements already established or under review within the local area and the intent of these easements has been established, the review team will consider these actions as purpose rankings are developed.

(C) The name of the qualified enforcement authority which is willing to be assigned enforcement authority for the easement as well as the name(s) of any entity(s), if known, that the enforcement authority may use to manage the easement. Whenever more than one qualified entity desires to be the enforcement authority, the report will be prepared by SCS and will indicate this fact.

(D) If appropriate, any special terms or conditions that would need to be placed on the easement plus unique or important features of the property which would not be adequately addressed by the standard easement terms and conditions.

(E) A proposed management plan consistent with the purpose or purposes for which the easement would be established. The management plan will outline the various management alternatives for the proposed easement. The enforcement authority's eventual selection of the alternative(s) to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the easement. This management plan will specifically recommend whether or not public recreational use and/or public hunting should be allowed on the easement and provide supporting reasons for the recommendation(s) made. Whenever changes are required in the management plan, the enforcement authority, with the concurrence of FmHA, may update the management plan to reflect the changes.

(F) The recommended term length of the easement. See paragraph VI of this exhibit.

### V. FmHA's review of easement team's report.

Upon receipt, the County Supervisor will review the easement team's report. If the report indicates that an easement is not feasible given the nature of the land, or the failure of a qualified entity to volunteer to become an enforcement authority, the County Supervisor will inform the borrower of the reason(s) that the easement has been denied and that the borrower may appeal the denial of the easement. If the report is favorable to an easement and more than one qualified entity has indicated its desire to be an enforcement authority, the County Supervisor will select a Federal entity over a non-Federal entity since the easement involves reduction of a Federal debt. If two Federal agencies each want to be the enforcement authority, the County Supervisor will select

the Federal agency that owns or controls property adjacent to the easement or the Federal agency whose mission or expertise best matches the priority use purpose(s) for which the easement would be established. In selecting between non-Federal entities, the County Supervisor will select the entity that has the greatest capability to enforce the terms and conditions of the easement during the proposed term of the easement.

### VI. Terms of easements.

A conservation easement may be obtained for a period of not less than 50 years and a borrower cannot crop the easement land during the term of the easement. A longer period of time or a perpetual easement shall be established if the easement review team determines that there is justification for extending the conservation easement past the 50-year minimum. Justification will exist if the easement would:

(A) Contribute directly to achievement of benefits to species protected by international treaty (e.g. migratory birds);

(B) Contribute directly to protection of habitat or restoration of habitat or benefit to threatened, endangered and/or candidate species;

(C) Serve as the site for wildlife habitat improvements which may be required to offset the unfavorable impact of a permit, license or project when improvements need to be longer than 50 years;

(D) Serve as the site for substantial investment of public or private funds in order to achieve stated resource conservation and/or management purposes;

(E) Be desirable that property be removed from production for a long period due to the type of land; or

(F) Serve as a significant historical site, ground water recharge area or other significant eligible easement objective.

### VII. Determining the amount of farmer program debt that can be cancelled.

(A) Calculate the amount of debt to be cancelled as follows:

(1) Step 1. Determine what percent the number of easement acres is of the total acres of land that secures the borrower's farmer program loans by dividing the easement acres that secure the borrower's farmer program loans by the total acres that secure the borrower's farmer program loans.

(2) Step 2. Determine the amount of farmer program debt that is secured by the easement acreage by multiplying the borrower's total unpaid farmer program loan balance (principal, interest and recoverable costs already paid by FmHA) by the percentage calculated in Step 1.

(3) Step 3. Determine the current value of the land in the easement by multiplying the present market value of the farm that secures the borrower's farmer program loans by the percent calculated in Step 1.

(4) Step 4. Select the lesser of the values calculated in Steps 2 and 3.

(5) Step 5. Subtract the current value of the easement acres in Step 3 from the farmer program debt that is secured by the easement acres in Step 2.

(6) Step 6. Select either the value arrived at in Step 4 or 5, whichever is the greater.



### An Example For Determining The Amount That Can Be Cancelled:

#### Situation

Total Acres, 300  
Easement Acres, 60  
Amount of unpaid farmer program debt secured by farm, \$450,000  
Current value of farm, \$300,000  
Step 1. 60 easement acres; 300 total acres = 20 percent  
Step 2. \$450,000 debt x 20 percent, Step 1 = \$90,000  
Step 3. \$300,000 value x 20 percent, Step 1 = \$60,000  
Step 4. Select the lower amount of Step 2 or Step 3 Calculations = \$60,000  
Step 5. \$90,000 in Step 2—\$60,000 in Step 3 = \$30,000, Amount FmHA is undersecured on Easement Land  
Step 6. Select the greater of Step 4 or 5 = \$60,000  
\$60,000 of the debt would be the maximum amount available for the debt cancellation.

(B) *Feasibility of debt cancellation.* The County Supervisor will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum value as calculated in paragraph (VII) Step 6 of this section. If the borrower would not be able to develop a feasible plan, the County Supervisor will notify the borrower of the reason that the easement has been denied and that the borrower may appeal this adverse decision after the County Supervisor has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(C) *Updating the title opinion.* Title examination will be the same procedure as provided for in § 1807.2 (a) and (b) of Part 1807 of this chapter (FmHA Instruction 427.1). A preliminary title opinion will not be required. The final title opinion will cover the period following the recordation of the initial loan mortgage. Title opinion costs will be considered nonrecoverable costs and will be paid by FmHA by completing and submitting a Standard Form 1034 and plus a Form FmHA 2024-1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024-P (Instructions and forms are available in any FmHA office).

(D) *Consent of other lienholders.* If there are any prior or junior lienholders, their consent to the terms of the easement must be obtained in writing by the borrower. The consent will be filed in the borrower's case file and need not be recorded unless required by State law. No change in the terms can be proposed by the prior or junior lienholders. If it is not possible to obtain the lienholders' consent, the easement will be denied and the borrower so informed. The borrower will have no appeal rights for an FmHA denial on this basis.

(E) *Identifying the boundaries of the easement.* A professional survey of the easement's boundaries will be required. FmHA will provide this service by contracting for the survey in accordance with FmHA Instruction 2024-A, Exhibit J (available in any FmHA office).

(F) *Reaching an agreement with the borrower.* The borrower will be informed of the easement's value, the impact on the remaining financial obligation, and the terms and conditions of the easement. The borrower also will be provided a copy of the easement review team's report. If the borrower decides to give the easement, approval will be made by the County Supervisor, the enforcement authority, and the borrower by signing Form FmHA 1951-39, "Grant of Easement," if the enforcement authority is the U.S. Fish and Wildlife Service, or Form FmHA 1951-39A, "Grant of Easement," if the enforcement authority is other than the U.S. Fish and Wildlife Service, or a similar form approved by the Office of General Counsel (OGC). (These FmHA forms are available in any FmHA office.) A similar form may not contain provisions whose purposes conflict with the purposes of this regulation or with the terms of Forms FmHA 1951-39 or 1951-39A. If the borrower requests a modification of the proposed easement, such modification cannot conflict with the purpose or purposes for which the easement would be established. The County Supervisor cannot approve a modification of the proposed easement's terms and conditions without first obtaining the concurrence of the enforcement authority. If the modification is substantial, in terms of the easement review team's recommendations, the members of the easement review team must be consulted. If an agreement cannot be reached with the borrower on the easement's terms and conditions, the County Supervisor will notify the borrower in writing that the easement is denied and that the borrower may appeal this denial after the County Supervisor determines the borrower's eligibility for the other servicing options in this subpart.

(G) *Recording of noncash credit.* Upon approval of the easement, the County Supervisor will complete Form FmHA 1951-47, "Farmer Program Noncash Credit for Purchase of Easement Rights," for entry into the FmHA field office terminal system. The borrower's loans that were closed prior to December 23, 1985, that are secured with the real estate on which the easement is obtained, will be credited with an amount not to exceed the established value of the easement acres. The amount credited will be applied on the FmHA loan(s) in order of priority of lien on the security and then on any other FmHA debts. The loan may be reamortized if needed.

(H) *Recording of the easement.* The County Supervisor will record Form FmHA 1951-39 or Form FmHA 1951-39A (or other acceptable form that has been approved by OGC) to comply with State laws. The County Supervisor then will retain a copy of the easement in the borrower's file and will provide a copy of the easement to the enforcement authority and to the borrower. Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA by completing a Standard Form 1034 and submitting Form FmHA 2024-1 for payment in accordance with § 2024.753(c) of FmHA Instruction 2024-P (Instructions and forms are available in any FmHA office).

### VIII. Violation of terms and conditions.

If the borrower violates any of the terms or conditions of the easement, the account will be liquidated in accordance with § 1965.26(b) of Subpart A of Part 1965 of this chapter. The borrower will also be responsible for all costs incurred by FmHA and the enforcement agency in the course of enforcing such terms and conditions. Enforcement expenses may include attorney's fees, costs of any litigation, and the cost of repair or restoration of the easement land to a condition compatible with conservation, recreational and wildlife purpose(s) for which the easement was established. Should the borrower wish to convey or sell the property subject to the easement during the term of the easement, the borrower must first notify the enforcement authority and the purchaser(s) will also be responsible for the same type of costs should the successor(s) violate the terms and conditions.

### IX. Responsibilities of the enforcement authority.

The enforcement authority will be named in any approved easement and once named agrees to accept the following responsibilities and duties:

(A) Upon receipt of an FmHA approved easement, provide FmHA with a legally binding document acknowledging its acceptance of the role as enforcement authority for that easement.

(B) Monitor compliance with the easement's terms and conditions.

(C) Ensure that the easement property is safely maintained to the extent required by relevant State law and accept all liabilities associated with implementing and carrying out its management responsibilities under the easement's terms and conditions and management plan.

(D) At its discretion, delegate or contract management functions to one or more management authorities, with all associated cost being the responsibility of the enforcement authority or the management authority, as agreed in that contract. Monitoring Compliance with the terms and conditions of the easement cannot be so delegated or contracted.

(E) For the first five years of the easement's life, report annually to FmHA on the status of compliance with the easement's terms and conditions. Thereafter, this report must be provided every five years. If circumstances develop which would result in substantial compliance problems or claims, or litigation involving the easement property, then the enforcement authority immediately must notify FmHA by certified letter.

### X. Monitoring compliance.

The enforcement authority is responsible for monitoring compliance with the easement's terms and conditions and management plan. However, when under the circumstances stated in the easement's terms and conditions (Form FmHA 1951-39 and Form FmHA 1951-39A), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the County Supervisor. In order to provide the requested written authorization,



the County Supervisor must determine that the request does not violate the easement's terms and conditions and must receive the written concurrence of the enforcement authority. In reaching this determination, the County Supervisor should consult with the State Director and OGC, as necessary.

#### Exhibit I—Guidelines for Determining Adjustments for Net Recovery Value of Collateral

This Exhibit provides guidance to State Directors and County Supervisors for determination of the factors to be used in adjusting current market value.

##### State Director Responsibilities

The State Director's analysis and guidance to County Supervisors will specify costs which are determined to be consistent state-wide, and provide specific guidance on the determination of costs which are somewhat consistent within the state but may vary on a County to County or property to property basis. All studies or surveys should be conducted so that all necessary information can be distributed at the same time.

##### A. Real Estate Costs

The analysis and guidance for liquidation and disposition costs should, as a minimum, address the following items and considerations:

(1) Management Costs. In situations where State or District wide contracts for management of inventory farms are in effect, the State Director will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no wide area contract rates for some or all counties, guidance should be given as to how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

##### (2) Local and Administrative Costs.

(a) The State Director will consult with the appropriate Regional Counsel in charge to determine the average amount of government attorney time involved in an involuntary liquidation. This time, in hours, will be multiplied by \$75 per hour to arrive at the legal costs associated with involuntary liquidations.

(b) The FmHA Resource Management System (RMS) work standards (FmHA Instruction 2006-J, Exhibit A, available in any FmHA office) for liquidation actions should be used to determine the administrative costs associated with liquidation for each type of loan, as follows:

(RMS standard divided by 60) × hourly rate for GS-11/1 = administrative cost of liquidation. The administrative costs during inventory should also be derived from the RMS standards. It will be necessary to determine the average number of property management actions per month per property, and compute the cost as follows: (average actions per property per month × average holding period × (RMS standard for property management actions divided by 60) × GS-11/1 hourly pay rate) + (RMS standard for sale actions divided by 60) × GS-11/1 hourly

pay rate = administrative costs for inventory period.

(3) Average holding period for suitable property. Normally, the average holding period will be determined to be the average months in inventory for suitable properties as derived from report code 597, Farmer Program Inventory. However, in situations where states have no suitable inventory, or have a very limited number of suitable properties for which the holding time is not representative, (i.e., one property held 75 months due to local litigation) the average of the holding periods of surrounding states should be used. National Office guidance may be requested in such cases.

##### (4) Resale Expenses.

(a) Commissions—A study will be conducted, at least annually, to determine the typical method for disposition of FmHA inventory farms in the state. The findings will be used to determine whether commissions should be included as resale expenses, or whether FmHA normally disposes of inventory farms without the assistance of brokers or auctioneers. However, if a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will *always* be included as a resale expense in that office. The percentage of commission will be the rate specified on the listing agreement(s) or contract(s) in effect for the County Office.

(b) Repairs—Guidance will be issued as to the kinds of repairs which are considered essential for typical properties in the state. Additionally, County Offices should be advised to obtain specific guidance in unusual cases.

(5) Yearly percentage decrease or increase in value. To provide a fair assessment of projected trends in farm land values, each State Director will establish a farm land market advisory committee (FLMAC). The committee will consist of the FmHA State Director, the State Executive Director of the Agricultural Stabilization and Conservation Service (ASCS), the State Conservationist for the Soil Conservation Service (SCS), and an Extension Specialist from a Land Grant University (if available) or other Agriculture Extension Service employee with knowledge of the farm real estate market.

The FLMAC will meet at least each July, and will consider at least the following information:

(a) The actual change in farm land values in the state during the previous year, as indicated in the most recent "Agricultural Land Values and Markets Situation and Outlook Report" issued by the USDA Economic Research Service.

(b) Current conditions in the state and national agricultural economics.

(c) Availability and cost of credit to purchase farm land.

(d) The amount of repossessed farm land held by FmHA, the Farm Credit System, and other private sector lenders.

(e) Any special conditions which would effect farm land values in the state.

(f) Any studies or research conducted by the State Agricultural University or similar scholarly source.

The FLMAC should, if possible, determine anticipated value changes on a regional basis

within the state, if the state has agricultural regions with discernable differences.

The committee's meetings and decisions, including the basis for those decisions will be documented, retained in the State Office as part of the State supplement and provided to interested parties upon request.

Prior to providing the FLMAC determinations to FmHA field offices, the State Director will contact the FmHA State Directors in surrounding states to determine if the committee's findings are fairly consistent with those of surrounding states. If there are significant differences, the State Director may reconvene the committee to reconsider its findings.

##### B. Chattel Costs

FmHA rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless significant acquisitions occur and the Administration determines that chattels do have a holding period.

(1) Legal and Administrative Costs. The procedures outlined for determining these expenses for real estate loans will be followed, except that RMS work standards and other factors for chattel loans should be used.

##### (2) Resale Expense.

(a) Commissions—A study will be conducted, at least annually, to determine typical and reasonable commission rates for sales of chattel property in the state. The results of the study will be provided as guidance to field personnel.

(b) Repairs—Guidance should be issued as to the kinds of repairs required for resale.

##### County Supervisor Responsibilities

The County Supervisor will use the state-wide costs and give careful consideration to the cost and other guidance provided by the State Director. The County Supervisor will determine certain localized liquidation costs based upon guidance in the supplement at least annually after receipt of the State supplement. These figures will be documented and provided to borrowers upon request.

A. Management Expense. If the County Office is not covered by State or District wide property management contracts, the management expense rates will be based upon local level contract rates, based upon the guidance provided in the state supplement.

B. Advertisements. The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with FmHA Instruction 1955-C.

C. Repairs. Approximate costs for typical essential repairs may be developed, considering the guidance in the state supplement. Repair items must be related to physical condition (i.e., roof, windows, doors, etc.) and not to functional or economic obsolescence.

D. Commissions. A survey of auctioneers will be made to determine the average commission rate for chattel sales in the area. Real Estate commissions, if any, will follow the state supplement.



E. Legal Expense. A survey of local closing agents will be performed to determine the cost FmHA will incur for closing transactions (title opinions, recorder's fees and the like).

F. Miscellaneous. Miscellaneous expenses such as land surveys which are routinely incurred should be determined by local survey and documented.

#### *Income*

Income will be added to net recovery value only when it is relatively certain that the income will be realized. Lease income will not be planned unless a lease is already in effect at the time the calculations are being made, and it appears that the lease will continue after FmHA acquires title. The amount of mineral or other lease or royalty income will be based upon the historical record of such income generated by the property. Chattels will not generate income unless they have a holding period.

#### *Depreciation*

The amount of depreciation anticipated for buildings and other improvements will be based upon the summation value and estimated remaining life of the improvement as reflected in the real estate appraisal. For example, a dwelling with a summation value of \$40,000 and a remaining life of 20 years will depreciate at a rate of \$2,000 per year. The depreciation calculations will be documented in the borrower's case file and provided to the borrower upon request. Chattels will not be depreciated unless they have a holding period.

### **Exhibit J—The Debt and Loan Restructuring System (DALRS)**

Farmers Home Administration (FmHA) primary loan service programs provide a large number of alternatives for restructuring an FmHA loan. The number of loans a borrower has increases the number of combinations of possible alternatives. It is difficult and extremely time consuming to manually calculate all the potential combinations of servicing actions. To assure that the various combinations of programs are considered, FmHA has developed the Debt and Loan Restructuring System (DALRS) for operation of the County Office computer system. FmHA personnel will not manually perform the calculations in this Exhibit. This Exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALRS goes through.

#### *What is DALRS?*

DALRS is a computerized decision support tool. This means that the computer assists the FmHA loan officer in making a decision. For example, FmHA regulations specify criteria for determining the interest rate when loans are restructured. DALRS will select an interest rate using the criteria in the regulations. Judgement decisions are made by the FmHA loan officer in evaluating the Farm and Home Plan and other information entered into the DALRS system.

#### *DALRS Operating System*

DALRS operates on the AT&T 3B2 computer system in FmHA field offices. It

runs under the UNIX (registered tm, AT&T) computer operating system. DALRS also utilizes Prelude (registered tm, Venturcom) for data entry and storage functions. To operate DALRS, UNIX System V, version 2.0.5 and Prelude version 2.1 are required.

FmHA developed DALRS to run under UNIX and Prelude because those systems have the capabilities necessary to allow for relatively rapid development, and are available in all FmHA offices. DALRS will not run under DOS on personal computers. Due to lack of resources, FmHA does not plan to develop duplicate computing capabilities on personal computers. FmHA will provide copies of program diskettes and/or source code to interested parties upon request.

#### *Advantages of DALRS*

The DALRS system provides several benefits to FmHA borrowers:

1. Speed of calculation. Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

2. Consistency. The use of DALRS assures that all calculations will be performed in the same way, and that the feasibility of all requests will be evaluated on the same calculation methods.

3. Full consideration. DALRS considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

4. Reduction of errors. Use of DALRS greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALRS eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. It is important to note, however, that DALRS results are only as reliable as the input data.

#### *What DALRS Does*

DALRS performs a series of mathematical calculations based upon predetermined criteria. These same calculations and procedures would be followed when calculations are performed manually. DALRS also generates a printed summary of its computations for FmHA and the borrower.

#### *Overview*

In arriving at a debt restructuring plan, DALRS will take advantage of all primary loan service programs to maximize the borrower's ability to repay debt and remain on the farm and avoid loss to the government.

Several combinations of primary loan service programs may be necessary to keep the borrower on the farm and avoid losses to FmHA. DALRS will examine each combination until a feasible plan is reached or it is determined a feasible plan is not possible with full utilization of primary service programs.

DALRS considers each primary serving option in the order described below until an appropriate solution is found. Each step increases FmHA's level of assistance to the Borrower and, when applicable, includes the primary loan service programs provided by previous steps.

1. Apply payments, including proceeds from the sale of non-essential assets, which the borrower plans to apply to outstanding FmHA debt.

2. Reschedule/reamortize loans at maximum terms with interest rates at the minimum or original note interest rate or regular loan program rate. Loans may be considered for consolidation in accordance with § 1951.909 of this subpart prior to being entered into the DALRS system.

3. Reschedule/reamortize loans at maximum terms with interest rates at the minimum of original note interest rate or applicable limited resource loan program rate.

4. Defer loans at the maximum term and minimum interest rate permitted by program regulation until a feasible plan is obtained in the first year. Loans are selected for deferral so as to minimize debt repayments in the years after the deferral period. If deferral of a loan will result in an excess cash flow margin in the first year then a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

5. Provide Softwood Timber loan deferral, when requested by borrower, to the maximum limits permitted by program regulations. Loan deferrals will be recalculated selecting Softwood Timber loans first so as to:

- a. Minimize any decrease in present value caused by conversion to Softwood Timber loans, and

- b. If regular deferrals are still needed to facilitate a feasible plan in the first year, minimize the increase in payments in the year after the expiration of deferral period.

A Softwood Timber loan deferral has the same effect on existing FmHA debt repayment as a full write down of the same amount of debt. A Softwood Timber loan deferral, however, will always have a greater present value. Therefore, after a loan is selected for Softwood Timber deferral it will not be considered for write down since this will always reduce present value.

#### *6. Write Down—*

Write down loans in the order, at the interest rates, and in combination with other primary loan service programs to maximize the ability of the borrower to remain on the farm and avoid FmHA loan losses.

#### *a. Conservation Easements*

Conservation Easement write-down (when requested by the borrower) will be considered over debt write-down whenever such FmHA Instruction 1951-S consideration will not prevent development of a debt restructuring plan which will keep the borrower on the farm.

#### *b. Security Considerations*

The FmHA County Supervisor will evaluate each loan and determine its write-



down priority considering the degree of collateralization. Loans which are secured but have no collateral value will generally be selected for write down before loans which are at least somewhat collateralized. There are three write-down security/collateral categories.

- (1) Low: These loans may be secured or unsecured and have no collateral value.
- (2) Medium: These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.
- (3) High: These loans are secured and fully collateralized; the Government's interest is fully protected.

#### c. Methodology

(1) Method 1 (See Section VI B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See Section VI C of this exhibit for a full description) will be used to develop a restructuring plan.

(2) For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, write down amounts will be calculated so that the "Balance Available" to repay debt is equal to or as close as possible to the "Debt Repayment".

(3) Loans selected for regular deferral will remain deferred, but will be fully or partially written down if needed to obtain positive cash flow margins. Loans converted to Softwood Timber loans (if requested) will remain Softwood Timber loans and will not be written down because writing down Softwood Timber loans decreases present value.

7. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell non-essential assets, improve security on FmHA debt, and consider Softwood Timber loans and Conservation Easements (if not originally requested by the Borrower and is permitted by program regulation).

Each of these measures will increase the computed present value. DALR\$ will use the new/revised information provided by the borrower and the FmHA County Supervisor to assure that the restructuring of existing FmHA debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA loan losses.

#### Iterative Calculation Process

##### I. Existing Loan Interest Rates

A. Obtain status information on each loan. The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

1. Principal balance.
2. Accrued interest balance.
3. Non-capitalizable interest balance.

B. For each loan compute the interest accrual to the proposed effective date for servicing actions.

Interest Accrual =  $P \times I_{\text{ex}} \times N\text{-DAYS}$ .

Where:

1. "P" is the outstanding principal balance on the date on which loan status information was obtained.

2. "I<sub>ex</sub>" is the daily interest accrual (decimal equivalent) based on the existing interest rate for the loan. Daily interest accrual is equal to the existing annual interest rate divided by 365.

3. "N-DAYS" is the number of days between the effective date and the status information date. If February 29 occurs between these two days it is not added to the number of days.

C. Determine the amount of Non-capitalizable accrued interest.

1. Deferred loans.

All accrued interest is non-capitalizable interest.

2. Other loans:

Interest less than 90 days past due is non-capitalizable interest.

#### II. Regular Program Interest Rates

A. Determine balance of funds available for debt repayment in the next planning year. This is the "Balance Available in Year 1". If loan deferrals are anticipated or are needed, also determine the Balance Available for debt repayment in the year after the end of the specified deferral period.

B. Determine total debt repayment in the next planning year. This is the "Debt Repayment in year 1." If loan deferrals are anticipated or are needed, also determine the debt repayment in the year after the end of the specified deferral period. Included in this amount are:

1. New loans:

New loans planned may affect repayment in the first planning year and/or the year after the end of the specified deferral period, depending on when the loan will be made and the repayment term. The equal annual payments on these new loans are included in the debt repayment calculations. Regular program interest rates (not limited resource rates) are used for all new loans.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that it is not possible to develop a feasible plan at regular program rates.

2. FmHA Loan for annual operating expenses.

Repayment of FmHA loans for annual operating expenses are based on regular loan program interest rates.

Included in this amount is the annual operating expense loan principal which is due in the applicable planning year.

Interest accrual on this loan may be estimated by multiplying the principal to be paid in the applicable planning year by the regular loan program interest rate (monthly decimal equivalent) and then by the average number of months the principal will be outstanding. See Attachment 1, Formulas, for details.

If some of the principal will be carried over to future years then that portion is either:

a. Included with the new loan payments computed using the amortization factor over the applicable loan term at regular loan program interest rates, or

b. If the amount to be carried over is already included in an existing loan, it is rescheduled with the existing loan over the

maximum term permitted by program regulation.

Note: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that a feasible plan is not possible with regular program rates.

3. Existing FmHA loans:

Also included are all repayments on existing FmHA debt as it stands now without servicing actions. As DALR\$ steps through the debt restructuring process this repayment amount will change.

Some existing loans may include in whole or in part an FmHA loan for annual operating expenses which is expected to be repaid in the current year. Since the debt repayment on FmHA annual operating expense loans is estimated in the previous step, the repayment of this debt should not be included with the repayment of existing loans. Only the repayment of long term debt should be included.

C. Apply loan payments which are planned to be made on the effective date of the servicing actions.

1. Payments are first applied to reduce/eliminate delinquent interest, then non-delinquent interest and then remaining principal balance.

2. If any loan is paid off in full because of these payments, recompute the debt repayment in year 1.

3. If the balance available is greater than or equal to the debt repayment in year 1 and there are no delinquent loans then no further servicing actions in DALR\$ are required.

D. Reschedule/reamortize loans as needed to eliminate any delinquency.

1. Criteria:

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

- (1) the original note the interest rate.
- (2) the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

e. The transaction records from the last payment date and last due date may be used to assist in determining the dollar amount of interest less than 90 days past due.

2. The Process.

a. Identify delinquent loans. All of these loans will be rescheduled/reamortized.

b. Recompute debt repayment in year 1.

c. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

E. Reschedule/reamortize the remaining non-delinquent loans.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

- (1) the original note interest rate.



(2) the regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

NOTE: Interest is not due until the loan installment is due. The date the servicing action takes place relative to the due date will effect how much interest can be capitalized. For example:

(i). A borrower is current January 1, 1988. An analysis in December 1988 indicates the borrower cannot pay installments due January 1, 1989. Based on the 1989 farm plan, the debts can be restructured. The loans will be restructured on January 10, 1989. None of the accrued interest is 90 days past due and no interest will be capitalized.

(ii). Same situations (i), except the restructuring occurs on April 2, 1989. The interest which accrued prior to January 1, 1989, will be capitalized. Interest which accrued after January 1, 1989, will not be capitalized.

#### 2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized unless the County Supervisor indicates that rescheduling should be carried out to eliminate unequal payment schedules or balloon payments.

#### 3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

### III. Limited Resource Interest Rates

#### A. Recompute debt repayment in year 1.

##### 1. Criteria.

a. New loans will have the maximum term permitted by program regulation, using the limited resource interest rates (when applicable) which will be effective on the date of the servicing actions.

b. Interest accrual on the FmHA loan(s) for annual operating expenses will be at the limited resource rate (when applicable).

##### 2. The Process.

a. Recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1, no further servicing actions are required.

B. Reschedule/Reamortize existing loans eligible for limited resource rates to obtain a positive cash flow margin in the 1st planning year.

##### 1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) the original note interest rate.  
(2) the loan program limited resource interest rate in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

#### 2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first unless it is delinquent.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized.

#### 3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to Debt Repayment then no further servicing actions are required.

### IV. Deferrals

#### A. Deferrals Period.

1. Deferral will only be beneficial if the cash flow margin will improve after the deferral period. This improvement must begin no later than six years after the current planning year, since the maximum deferral period is 5 years.

2. To determine the appropriate deferral period the County Supervisor and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

3. It is not necessary that deferrals provide a positive cash flow margin after the deferral period because it is still possible to obtain a positive cash flow margin with a combination of deferrals, debt write down and the other primary loan service programs. However, to maximize the potential for the borrower to remain on the farm and avoid losses on FmHA loans, a new farm plan must be prepared by the FmHA County Supervisor and borrower for the year after the end of the selected deferral period.

4. If there is no anticipated improvement in cash flow margin, then a deferral year plan need not be prepared since other combinations of primary service programs will maximize the potential for the borrower to remain on the farm and avoid losses on FmHA loans.

#### B. Deferrals.

##### 1. Criteria.

a. Loans which have been rescheduled/reamortized previously in DALRS will be

rescheduled/reamortized at the same interest and term.

b. Other loans which have not been previously rescheduled/reamortized in DALRS will be rescheduled/reamortized as follows:

(1) Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

(2) The interest rate will be the minimum of:

(a) the original note interest rate.  
(b) the loan program interest rate (limited resource, if applicable) in effect on the date of the servicing action calculations.

(3) Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

(4) Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

#### 2. Loan Selection.

This selection process will assure that after a positive cash flow margin is achieved in the 1st year, the cash flow margin in the year after the deferral period will be the greatest.

a. Calculate the payment after the deferral period for each loan eligible for deferral. This is only a side calculation to determine the best order of selection. A deferral will decrease the payments in the 1st planning year and increase the payments in the year after the deferral expires.

b. For each loan compute the ratio of the increase in "after deferral period" payment to the decrease in 1st year payment.

c. The loan with the smallest ratio is deferred first and so on until the balance available is greater than or equal to debt repayment in year 1.

#### 3. The Process.

a. Taking one loan at a time, defer the selected loan, recompute the debt repayment in year 1. Also compute the debt repayment in the year after the end of the deferral period.

b. If the balance available is equal to debt repayment in year 1 and the balance available is greater than or equal to debt repayment in the year after the end of the deferral period then no further servicing actions are required.

c. If the balance available is greater than the debt repayment in year 1, then this implies that the last loan deferred did not require a full deferral.

(1) Compute amount of deferral of the last loan necessary to achieve equality between balance available and debt repayment in year 1.

(2) Recompute payments for this loan during the deferral period and the years after the expiration of the deferral period.

(3) If the balance available in the year after the deferral period is greater than or equal to the debt repayment then no further servicing actions are required.

#### 4. Partial Deferrals.

a. Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payments on that loan. See



Attachment 1 to this Exhibit for applicable formulas for partial deferrals.

b. Examples:

Case 1: Partial Deferral without Write Down.

Situation: A full deferral is more than is needed to achieve a positive cash flow margin in year 1. A full payment on the loan will produce a negative cash flow margin in year 1.

The Process.

1. Determine amount of deferral of necessary to achieve a feasible plan in the first year.

"d" is the fraction of the loan which must be deferred. This fraction is applied to both the principal (P) and the non-capitalizable interest (N).

"r" is the amount of cash flow margin in the first year with a full deferral. "R" is the debt repayment on the loan in the first year without deferral.

$$d = 1 - (r/R)$$

2. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion.

$$P_1 = (1-d) \times P = (r/R) \times P$$

$$N_1 = (1-d) \times N = (r/R) \times N$$

Deferred Portion

$$P_2 = P - P_1$$

$$N_2 = N - N_1$$

Case 2: Partial Deferral with Write Down.

Write down is required for a feasible plan. In this situation the write down and partial deferral must yield a payment which exactly meets the borrower's ability to repay debt. This will maximize the "Present Value" and the borrower's ability to remain on the farm.

Situation: The loan is partially deferred to achieve a feasible plan in the 1st year. The payments in the year after the end of the deferral period exceed the borrower's ability to pay even with a partial deferral. Write down is necessary to achieve a feasible plan. The loan which is partially deferred has been selected as the next loan to write down based upon write down selection criteria.

Write down sequence:

1. The non-capitalizable interest (of the deferred portion of the loan) will be written down first until a feasible plan is achieved or the non-capitalized interest (of the deferred portion of the loan) is fully written down.

2. The remaining principal (on the deferred portion of the loan) is then written down until a feasible plan is achieved or the principal is fully written down.

3. At the point the deferred portion of the loan has been fully written down, but a feasible plan has not yet been found. The subject loan is now a non-deferred loan with reduced principal and reduced non-capitalizable interest. This new loan must now compete for selection for write down with all remaining loans based on the write down selection criteria.

V. Softwood Timber

A. Criteria.

1. Loan terms will be the maximum permitted by program regulation.

2. The interest rate will be the minimum of:

- a. the original note interest rate, or
- b. the Softwood Timber program interest rate which will be in effect on the date of the servicing action calculations.

3. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period.

4. Interest less than 90 days past due will not be capitalized and accrue interest, and will be payable at the end of the Softwood Timber deferral period.

5. The rescheduled/reamortized principal amount plus any non-capitalized interest of Softwood Timber loans will not exceed the maximum amount permitted by program regulation or the amount needed to develop a feasible plan, whichever is less.

B. Loan Selection.

Loans will be selected for the Softwood Timber loan program to maximize the present value after conversion to Softwood Timber, thus avoiding loan losses.

1. Cancel all previously calculated deferrals.

2. For each loan compute the present value before and after conversion to a Softwood Timber loan. Then compute the decrease in present value (note: for loans in which the present value increases this will be negative number).

3. For each loan compute the ratio of the decrease in present value to the decrease in first year repayment after conversion to a Softwood Timber loan.

4. Select the loan with the smallest (or most negative) ratio first.

5. If loans have equal ratios select the loan having the least security among these loans first. Softwood Timber loans will have new security instruments. This will improve the FmHA security and could increase present value if write down is required for other loans.

C. The Process.

1. Starting with the first loan in the list of loans ordered to minimize decrease in present value convert the loan to Softwood Timber.

2. Continue this process until the maximum limit for Softwood Timber conversion is reached or a feasible plan is possible in the first year.

3. If a loan is only partially converted then create a new loan identity for the partially converted loan. The portion not converted retains the same interest rate and term prior to the conversion to Softwood Timber.

4. If fully utilizing Softwood Timber loan conversion authorities do not result in a feasible plan in the first year rework the loan deferral calculation described in Section IV of this exhibit (if applicable). Do not include the loans selected for Softwood Timber loans in the reworking of the deferral calculations.

5. If conversion to a Softwood Timber loan will permit a feasible plan to be developed (with or without deferrals) no further servicing actions are required.

VI. Write-Down

Write-down of loans will proceed with Method 1 (contained in VI B) first. If a debt restructuring plan which will keep the borrower on the farm cannot be found using Method 1, then write-down will be recalculated using Method 2.

A. Status.

Debt repayments are at their absolute minimum, a feasible plan is still not possible

in the first year and/or the year after the end of the deferral period (if applicable).

1. At this point consideration of primary loan service programs has had the following result:

a. All delinquent loans have been rescheduled/reamortized.

b. If the borrower plans to make payments prior to the servicing actions, these payments have been applied to loans to reduce indebtedness.

c. All existing FmHA loans have been considered for rescheduling/reamortization.

d. Deferrals have been computed for borrowers when the cash flow margin in the year after the deferral period was higher than the cash flow margin in the first year.

e. Loans have been converted to Softwood Timber loans (when requested by the Borrower) to the maximum extent permitted by program regulations.

2. FmHA loans for annual operating expenses and all proposed new loans have been computed at limited resource rates (when applicable).

3. All loans are at the lowest interest rate and maximum term permitted by program regulations.

B. Method 1.

Provide Conservation Easement write down on eligible loans, when requested by the borrower, to the maximum limits permitted by program regulations. Conservation Easements will be the first write down considered in this method. If a feasible plan is not obtained using conservation easements then the remaining loans will be written down using debt write-down authority.

1. Criteria.

a. Only loans secured by real estate are eligible for conservation easement write-down.

b. Interest rates, loan terms, loans selected for deferral (if applicable) do not change from the status described in Section VI A of this exhibit. That is, debt repayment is at the absolute minimum.

c. Loans converted to Softwood Timber loans will not be written down.

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as necessary:

a. Place all loans eligible for conservation easements in a single group. Of these loans order them for selection as follows:

(1) Least collateralized loans first.

(2) For loans with equivalent collateralization, loans with the largest "Amortization Factor" first. (See Amortization Factors in Attachment 1 to this exhibit.)

b. If a feasible plan is not obtained using conservation easements or conservation easement write-down had not been requested order the remaining loans as follows:

(1) Unsecured and/or least collateralized loans first.

(2) For loans with equivalent security, loans with the largest "Amortization Factor" first. (See Amortization Factors in attachment to this exhibit.)

3. The Process.



Each time a new loan is selected for write-down, deferrals (if applicable) must be recalculated as described in Section IV of this exhibit.

a. Conservation Easement write-down.

(1) Starting with the first loan selected for conservation easement write-down, determine whether a full write-down will permit a feasible plan in the applicable year. The applicable year is the first planning year if deferrals have not been considered. If deferrals have been considered it is the year after the end of the deferral period.

(2) If a full conservation easement write-down will achieve positive cash flow compute the amount of conservation easement write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount. No further servicing actions are required.

(3) If a full conservation easement write-down does not achieve a positive cash flow margin in the applicable year, recompute the debt repayment in the first planning year and the debt repayment in the year after the end of the deferral period (if applicable). Deferrals will have to be recalculated using the methods described in Section IV of this part.

(4) Continue selecting loans for conservation easement write-down and repeat this process until an acceptable cash flow margin is obtained in the applicable year or the maximum conservation easement write-down permitted by program regulation is obtained.

b. Debt Write-Down.

(1) Conservation easement write-down (if applicable) did not attain a positive cash flow margin in the applicable planning year. With the remaining loans, reprioritize their selection without regard to eligibility for conservation easements using the criteria described in section VI B 3 of this exhibit.

(2) Using debt write-down authority write down each of these loans until a positive cash flow margin is obtained in the applicable year. Compute the amount of write-down for that loan so that the balance available is equal to the debt repayment.

(3) If the present value of the future payment stream on remaining debt equals or exceeds the net recovery value of the collateral for FmHA loans then no further servicing actions are required.

C. Method 2.

Use this method only if Method 1 does not find a debt restructuring plan which will allow FmHA to continue with the borrower.

1. Criteria.

a. Loan terms are the maximum permitted by program regulation.

b. All other loans (except Softwood Timber loans), including the loan selected for write down will be at the minimum of the original note interest rate or the limited resource interest rate (if applicable).

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as required.

a. Unsecured and/or least collateralized loans first.

b. For loans with equivalent security, loans with the smallest present value factor first.

(See Present Value Factor in Attachment 1 of this exhibit.) Note the Present Value Factor is independent of loan interest rate.

c. For loans with equal present value factor, loans with highest interest rate first.

3. The Process

Each time a new loan is selected for write-down all loans whose interest rates change according to the criteria in Section VI C1b of this exhibit will be rescheduled/reamortized using the new interest rate. Deferrals (if applicable) must also be recalculated as described in Section IV of this part.

a. Starting with the first loan selected for debt write-down, determine whether a full write-down will result in a positive cash flow margin in the applicable year. The applicable year is the first planning year if deferrals have not been used. If deferrals have been used, it is the year after the deferral period.

b. If a full debt write-down results in a positive cash flow compute the amount of write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount and test present value with net recovery value.

D. Net Recovery Value Test

1. Conservation Easements have been requested. The Net Recovery Value test is not applicable and no further servicing actions are required if all of the following are applicable:

a. The loan is eligible for conservation easement.

b. The write-down amount does not exceed the conservation easement write-down limit specified by program regulations.

c. All other loans written down were based on conservation easement authority.

2. If the present value of the repayment on remaining FmHA debt equals or exceeds the net recovery value of collateral a debt restructuring plan has been found which will keep the borrower on the farm and no further servicing actions are required.

3. If a full write-down of a loan does not achieve a positive cash flow margin in the applicable year continue selecting loans for write-down and repeat this process until a positive cash flow margin is obtained in the applicable year or there are no other loans left to write-down.

VII Net Recovery Value

DALRS computes the net recovery value of collateral to obtain a value to use for the net recovery value test outlined in section VI C3b of this exhibit, as required in § 1951.909(f) of this subpart. See Exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral," for guidance in determining the value of specific items in the net recovery value calculations outlined here.

Net recovery value is computed for all FmHA Farmer Program loan security. If FmHA's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA credit, and FmHA has a junior lien subject to the purchase money financing. In the case of the second tractor, FmHA subordinated its lien to another lender to

finance repairs, thus, FmHA has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

The general formula for net recovery value is as follows:

market value of security  
minus prior liens  
minus property taxes while in inventory  
minus depreciation on property  
minus management charges  
minus repairs necessary for resale  
minus legal and administrative fees  
minus sales costs  
minus advertising cost  
Plus/minus increase/decrease in value while in inventory  
minus interest cost while in inventory  
minus miscellaneous expenses, if any  
plus anticipated income while in inventory  
equals net recovery value for security property  
total of net recovery value for individual property items-net recovery value of collateral.

The individual items in the net recovery value formula are computed as follows:

1. Market value of security—the market value of the security based upon a current appraisal.

2. Prior liens—the total of all liens preceding FmHA's security interest, including past due taxes and assessments and subordinates.

3. Property taxes and assessments while in inventory—(annual tax and assessments due divided by 12) × average holding period in months.

4. Depreciation on property—Annual amount of depreciation determined by the County Supervisor, divided by 12) × average holding period in months.

5. Management charges—based upon methods of management used (acres under management × annual rate per acre) divided by 12 × average holding period in months, or (net income on a monthly basis × percentage fee charged) × average holding period in months, or the anticipated monthly management and maintenance expense × average holding period in months, or the total of the appropriate combination of these.

6. Repairs—as determined necessary by County Supervisor.

7. Legal fees—determined with guidance from the State Director.

8. Sales costs—commission rate × market value of security.

9. Advertising—cost of three-week advertisement 1 time × (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease—annual percentage divided by 12 × average holding period in months × market value.

11. Interest cost during inventory period—(interest rate on 90-day T-Bills × current market value) divided by 12 × average holding period, in months.



12. Average holding period for inventory, in months—determined by the State Director in accordance with FmHA Instructions.

13. Miscellaneous—any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income—income received every month  $\times$  average holding period in months  $\div$  (total of non-monthly income received for the year divided by 12)  $\times$  average holding period in months.

#### VIII. Summary

At this point, DALRS has finished its calculations. DALRS will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALRS will provide a report of the results of the calculations performed, including the present value test.

If DALRS does not find a solution that will provide a feasible plan, FmHA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

#### Attachment 1.—Formulas Used in DALRS Calculations

##### 1. Amortization Factors (AF)

There are two amortization factors used to compute equal annual installment debt repayments: (1) The amortization factor for interest bearing debt and, (2) The AF for non-interest bearing debt. The first AF is a function of both loan term and interest. The second AF is a function of loan term only.

A. Amortization factor for interest bearing debt

1. Notation:  $[AF](i,t)$  (AF=amortization factor)

2.  $[AF](i,t) = [i \times (1+i)^t] / [(1+i)^t - 1]$

where

a. "t" is the loan term (years)

b. "i" is the annual interest rate (decimal equivalent)

3. Calculation of the amortization factor for interest bearing debt

example: loan terms are 5% interest, 15 years ( $i=.05$ ,  $t=15$ )

$AF = (.05 \times (1+.05)^{15}) / [(1+.05)^{15} - 1]$

$AF = .09635$

B. AF for non-interest bearing debt

1. Notation:  $[AF](0,t)$

The notation is similar to the notation used for the AF of interest bearing debt except the interest rate is set equal to zero (0).

2. Formula

$[AF](0,t) = 1/t$

Where

"t" is the term of the loan (Years)

This factor is used to determine annual repayment of Non-capitalized debt. Accrued interest less than 90 days past due is one type of non-capitalized debt. Note: The AF formula for interest bearing debt reduces to this formula when interest is zero.

3. Calculation of the amortization factor non-interest bearing

example: loan term is 15 years

$AF = 1/15$

$AF = .06667$

##### II. Present Value Factor (PVF)

Present value is calculated when debt writedown is used. The present value of restructured loans is the sum of the present values of individual loans computed using these formulas.

There are two present value factors used to compute the present value of future payments. (1) The present value factor for single payments and (2) the present value factor for uniform series payments.

A. PVF for single repayments

1. Notation:  $[PV1](id,t)$  ( $PV1$ =Present value 1 payment)

2. Formula

$[PV1](id,t) = 1/(1+id)^t$

where

a. "t" is the number of payments (years) from the "present" date. In all calculations, the "present" date is the effective date of proposed servicing actions.

b. "id" is the "discount rate" (annual decimal equivalent)

example: a payment will be received 45 years from the present date.

The discount rate is 7%

$id = .07$   $t = 45$

$PV1 = 1/(1+.07)^{45} = .047613$

if the payment to be received is \$50,000

$PV = PV1 \times \$50,000 = 2381$

B. PVF for uniform series of payments (equally amortized installments)

1. Notation:  $[PVS](id,t)$  ( $PVS$ =Present value of series of equal payments)

2. Formula

$[PVS](id,t) = [(1+id)^t - 1] / [id \times (1+id)^t]$

Where

a. "t" is the number of payments (years) from the "present" date. In all calculations, the "present" date is the effective date of proposed servicing actions.

b. "id" is the "discount rate" (annual decimal equivalent)

example: a series of equal annual installments will be received annually for 30 years.

The discount rate is 7%

$id = .07$   $t = 30$

$PVS = [(1+.07)^{30} - 1] / [.07 \times (1+.07)^{30}] = 7.6031$

if the annual installment is \$10,000

$PV = PVS \times \$10,000 = 76,031$

##### III. Joint Amortization Factor

This factor is used in the selection of loans for deferral and for write down. It is the weighted average of the amortization factors for interest bearing debt and non-interest bearing debt. When this factor is multiplied by the remaining balance on the loan it yields the equal annual installments for the loan.

A. Calculations

1. Notation:  $[JAF](i,t)$

2. Formula

$[JAF](i,t) = [(P \times [AF](i,t)) + (P_{nc} \times [AF](0,t))] / P_T$

where:

"P" is the sum of the principal balance plus the past due accrued interest.

"P<sub>nc</sub>" is the non-capitalizable portion of the accrued interest.

"P<sub>T</sub>" is the total debt and equal to  $P + P_{nc}$

"[AF](i,t)", "[AF](0,t)", "t" and "i" are as defined in paragraphs I.A. and I.B. in this attachment.

example:  $P = 5,886$   $P_{nc} = 581$   $P_T = 6,467$

$i = .05(5\%)$   $t = 15$  (years)

$[AF](i,t) = .09635$   $[AF](0,t) = .06667$

$JAF = [(5886 \times .09635) + (581 \times .06667)] / 6467$

$JAF = .09369$

Annual installment =  $P_T JAF$

Annual installment = \$606 (always round to next dollar)

##### IV. Average Month Outstanding

(FmHA Annual Operating Expense Loan):

This is the average number of months an FmHA loan of annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, loan(s) for annual operating expenses are estimated to be \$15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months
15,000 .....	3
8,000 .....	2
6,000 .....	4

Average Months =  $(3 \times 15,000) + (2 \times 8,000) + (4 \times 6,000)$

$15,000$  (total loans for annual oper. exp.)

Average Months =  $(45,000 + 16,000 + 24,000) / 15,000$

Average Months Outstanding =  $85,000 / 15,000$

Average Months Outstanding = 5.7 months (Round to nearest tenth of month)

##### V. Partial Deferral

Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payment on that loan. Calculation of the partial deferral proceeds as follows:

##### Input Data

P: Loan Principal plus capitalizable accrued interest without write down.

N: Non-capitalizable interest without write down.

i: Interest Rate (decimal, annual basis)

t: Loan Term (Years)

n: Deferral period

r: Excess cash flow margin created in the first year with a full deferral of a loan.

##### Calculated/Formula Variables

R: Full payment on loan without deferral or write down

$R = [(P \times [AF](i,t)) + (N/t)]$

R: Full payment on loan with deferral but no write down.

d: fraction of loan deferred,  $d = 1 - (r/R)$ .

##### Output Information

Non-deferred Portion of Loan

P<sub>1</sub>: Loan Principal plus capitalizable interest on nondeferred portion of loan.

N<sub>1</sub>: Non-capitalizable interest on non-deferred portion of loan.

Deferred Portion of Loan

P<sub>2</sub>: Loan Principal plus capitalizable interest on deferred portion of loan.

N<sub>2</sub>: Non-capitalizable interest on deferred portion of loan.



**The Process**

1. Determine the order in which loans will be deferred based upon the JAF (section III of this attachment).

2. Determine amount of deferral necessary to achieve a feasible plan in the first year (compute variable d).

3. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion

$$P_1 = (1-d) \times P = (r/R) \times P$$

$$N_1 = (1-d) \times N = (r/R) \times N$$

Deferred Portion

$$P_2 = P - P_1$$

$$N_2 = N - N_1$$

**Exhibit K—Notification of Consideration for Preservation Loan Service Programs**

Dear (Borrower's Name):

This notice is to inform you that you are being considered for Preservation Loan Service Programs (Homestead Protection and leaseback/Buyback). You applied for these programs when you applied for Primary Loan Service Programs (debt restructuring).

FmHA was unable to assist you to restructure your FmHA loans with Primary Loan Service Programs. We will continue to consider you for Homestead Protection and Leaseback/Buyback. We will, however, need the following additional information to complete our processing of your request:

- 1.
- 2.
- 3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Preservation Loan Servicing and you will be notified of your right to appeal FmHA's adverse decision.

If you wish to withdraw your request for Preservation Loan Servicing Program, please complete and return the enclosed Attachment 1, "Response to Notification of Consideration for Preservation Loan Service Programs," within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

County Supervisor, Farmers Home Administration, United States Department of Agriculture.

**Attachment 1—Response to Notification of Consideration for Preservation Loan Service Programs**

TO: County Supervisor, Farmers Home Administration.

FROM: (Please Print your Name and Address).

I have read the Notification of Consideration for Preservation Loan Service Programs which I received with this response form.

I want to withdraw my request for preservation loan servicing.

Borrower's Signature

(Date)

**Exhibit L—Homestead Protection Program Agreement**

This agreement is entered into this — day of —, 19—, by and between the Farmers Home Administration (FmHA) of the United States Department of Agriculture and — ("Borrower").

A. Borrower has received a loan or loans from FmHA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FmHA loan(s) may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FmHA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FmHA acquires title to it.

D. FmHA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FmHA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FmHA agrees to lease the Homestead Protection property, as more particularly described in Attachment 1 attached hereto, to Borrower on the terms and conditions set forth in the lease attached hereto as Attachment 2 (the "lease"). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FmHA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FmHA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be — years. This term will be inserted in the lease.

5. The rent to be charged Borrower during the term of the lease will be determined by FmHA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. This amount will be determined prior to execution of this agreement. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955-20. If the Borrower disagrees with the rent determined by the County Supervisor, the borrower can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. Borrower agrees to cooperate with FmHA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FmHA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not started on or before 2 years from the date of the agreement, the agreement shall end and be of no further force or effect. The borrower may appeal this decision pursuant to Subpart B of Part 1900 of this chapter.

Farmers Home Administration

By: —

Borrower:

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955-20.

**Exhibit M—Homestead Protection Program Letter**

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Insert Address)

NOTICE OF THE AVAILABILITY OF HOMESTEAD PROTECTION

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FmHA acquired the property which was security for your FmHA loan. FmHA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm outbuildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 90 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you may contact the County Supervisor at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Homestead Protection Program.

Sincerely,

County Supervisor.

**Exhibit N—Leaseback/Buyback Agreement**

This Agreement is entered into this — day of —, 19—, by and between the Farmers Home Administration ("FmHA") of the United States Department of Agriculture and — ("Lessee").

A. Lessee is eligible for the FmHA leaseback program under 7 CFR Part 1951, Subpart S, for the real property described on the enclosed Attachment 2 (the "leaseback property").



B. FmHA has not yet acquired title to the leaseback property but agrees to lease it to Lessee on the following terms and conditions when FmHA acquires clear title to it:

1. Subject to the terms and conditions set forth below, FmHA agrees to lease the leaseback property to Lessee on the terms and conditions set forth in the lease, Form FmHA 1955-20. Borrower agrees to enter into the lease of the leaseback property.

2. FmHA's obligation to enter into the lease of the leaseback property is subject to the occurrence of the following conditions:

a. FmHA acquires clear title to the leaseback property in connection with the liquidation of the owner's interest in that property.

b. If someone other than the Lessee is eligible for and has or may exercise Homestead Protection rights under 7 CFR Part 1951, Subpart S, the leaseback property will be reduced by the Homestead Protection property. FmHA's obligation to lease the remaining leaseback property is contingent on FmHA's determination that all State and local laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased have been satisfied.

3. The term of the lease will begin on the date the latter of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be — years. This term will be inserted in the lease.

5. The rent will be an amount equal to that for which similar properties in the area are being leased. This amount will be determined prior to the execution of this agreement and the agreed upon rent entered in the lease form, Form FmHA 1955-20. If the Lessee disagrees with the rents determined by the County Supervisor, the Lessee can appeal this determination pursuant to 7 CFR Part 1900, Subpart B.

6. The property, upon acquisition by FmHA, will be subject to any applicable USDA restrictions regarding the use of property containing wetlands, floodplains and/or highly erodible lands.

7. If the lease term has not started on or before 2 years from the date of this agreement, the agreement will end.

Farmers Home Administration

Lessee

By: \_\_\_\_\_

County Supervisor

Date \_\_\_\_\_

#### Exhibit O—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor to advise a former owner who held title to the property of the availability of leaseback/buyback)

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Location)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Date: \_\_\_\_\_

Dear \_\_\_\_\_:

The farm that you once owned may be available for you to buy or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations, 7 CFR Part 1951, Subpart S. FmHA acquired this property on \_\_\_\_\_. The FmHA leaseback/buyback program may permit you to lease or purchase the property. You may select the terms of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the County Supervisor at \_\_\_\_\_. In order to be considered for leaseback/buyback, you must make application at the County Office not later than (enter the date 180 days from acquisition or period longer than 180 days if applicable State laws prescribe a longer period). We recommend that if you are interested in leasing or purchasing the property, you should immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an individual] If you are not interested in purchasing or leasing the property and if you have a spouse or child(ren) who are actively engaged in farming, they have a preference to buy or lease, the property. It will be your responsibility to notify your spouse and child(ren) of their possible rights to lease or buy the property. You should have them contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they must make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribe a longer period). If you have a spouse or child(ren) that are interested in leasing or purchasing the property, we recommend they immediately contact the County Office to determine if a lease or purchase agreement can be entered into.

[If the borrower was an entity] If you are not actively engaged in purchasing or leasing the property the shareholders (if the borrower was a corporation owned exclusively by members of the same family), partners (if the borrower was a partnership whose partners are exclusively members of the same family), or members (if the borrower was a joint operation or cooperative whose members are exclusively members of the same family) may have a preference to lease or purchase the farm. In order to qualify for leaseback/buyback the individual must be actively engaged in farming. You must have these people contact the County Supervisor if they are interested in leasing or buying the property or want more information. In order to participate in the leaseback/buyback program they make application not later than (enter the date 190 days from date of acquisition or period longer than 190 days if applicable State laws prescribed a longer period). If any of these individuals are interested in leasing or purchasing the property, we recommend they immediately

contact the County Office to determine if a lease or purchase agreement can be entered into.

Under some circumstances, an operator (lessee) of the property at the time FmHA acquired it may have a preference in leasing and purchasing the property. Please advise us immediately of the name and address of any lessee of the farm who was operating the farm when FmHA acquired it.

[If the property has a dwelling]. This property has a dwelling which is subject to the FmHA Dwelling Retention regulations 7 CFR Part 1951, Subpart S. If you are eligible for Dwelling Retention, you will be notified in a separate letter. If someone else has Dwelling Retention rights, then Dwelling Retention rights will take priority over leaseback/buyback rights.

Failure to apply leaseback/buyback by (insert date 180 days from date of acquisition or longer period than 180 days if applicable State laws prescribe a longer period) will terminate any rights that you have to purchase or lease the property under the leaseback/buyback regulations.

Sincerely,

County Supervisor.

#### Exhibit P—Notice of Availability of Leaseback/Buyback

(For use by the County Supervisor to advise operators of the availability of leaseback/buyback)

UNITED STATES DEPARTMENT OF AGRICULTURE

FARMERS HOME ADMINISTRATION

(Location)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(Name and Address)

Date: \_\_\_\_\_

Dear: \_\_\_\_\_

The farm that was previously owned by \_\_\_\_\_ (former owner) and operated (leased) by you may be available for you to purchase or lease under certain conditions set out in Farmers Home Administration (FmHA) leaseback/buyback regulations 7 C.F.R. Part 1951, Subpart S. The FmHA leaseback/buyback program may permit you to lease or purchase the property. You may select the term of the lease which may be from 1 year to 5 years. The purchase may be for cash or under certain circumstances FmHA may be able to finance the purchase of the property through a credit sale. If you would like to know more about the leaseback/buyback program, please contact the FmHA County Supervisor at \_\_\_\_\_. In order to be considered for leaseback/buyback, you must make application for leaseback or buyback at the County Office by (enter the date 30 days from date of this letter).

Failure to respond by this date will terminate any rights that you have to purchase or lease the property.

Sincerely,

County Supervisor.



**Exhibit Q—Waiver of Leaseback/  
Buyback Rights**

(For use by the previous owner, any individual or entity to waive any rights to leaseback/buyback)

I (we) acknowledge that in accordance with the provisions of the Agricultural Credit Act of 1987 and Farmers Home Administration (FmHA) leaseback/buyback program, I (we) have certain rights to lease or purchase the property that I (we) formerly owned— or [was formerly owned by (name of previous owner)] which was acquired by FmHA on [date of foreclosure or voluntary conveyance]. I (we) elect not to be considered for leaseback/buyback and hereby waive all rights to lease or purchase the subject property.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PART 1955—PROPERTY  
MANAGEMENT**

47. The authority citation for Part 1955.13 revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart A—Liquidation of Loans  
Secured by Real Estate and  
Acquisition of Real and Chattel  
Property**

48. Section 1955.3 is amended by adding in alphabetical order a new paragraph for the definition of "Homestead protection" to read as follows:

**§ 1955.3 Definitions.**

*Homestead protection.* The Farmer Programs borrower-owner's right to lease with an option to purchase the principal residence located on or off the farm and up to 10 acres of adjoining land possessed and occupied by the borrower-owner, including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead.

49. Section 1955.10 is amended by revising and introductory text, paragraph (c)(1)(ii) and paragraph (d)(8) to read as follows:

**§ 1955.10 Voluntary conveyance of real  
property by the borrower to the  
Government.**

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower in writing that there is equity in the property before accepting an offer

to voluntarily convey. If FmHA receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. If the FmHA lien has neither present nor prospective value or if its enforcement would be unlikely or uneconomical, FmHA should refuse the voluntary conveyance. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of Subpart A of Part 1965 of this chapter or § 1965.118(c) of Subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart, "Worksheet for Determining the Recovery Value of Farmer Program Real Estate Security," will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its cost in return for the acceptance of the voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. For Farmer Program borrowers who have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after

acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the non-farm tract.

(c) \* \* \*

(1) \* \* \*

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of Subpart B of Part 1955 of this chapter.

(d) \* \* \*

(8) Farmer program loan borrowers who voluntarily convey after receiving the appropriate loan servicing notice(s) contained in the attachments of Exhibit A of Subpart S of Part 1951 of this chapter, must properly complete and return the acknowledgement form sent with the notice.

50. Section 1955.13 is revised to read as follows:

**§ 1955.13 Acquisition of property by  
exercise of Government redemption rights.**

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on Exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 U.S.C. § 2410) may be waived without consideration. If a State law right of redemption exists and may



be sold, it will not be disposed of for less than its value.

51. Section 1955.15 is amended by revising the introductory text, paragraphs (d)(2)(iv), (d)(3), (d)(5) and (f)(5) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area. Also, in Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this Chapter), the borrower must have received Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

(d) \*\*\*

(2) \*\*\*

(iv) If a borrower has both Farmer Program and SFH loans:

(A) When the borrower's dwelling financed with an SFH loan(s) is secured by the same farm real estate as the Farmer Program loan(s) (*dwelling located on the farm*), the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. One appeal hearing and one review will be held for both adverse actions.

(B) When the borrower's SFH loan financed dwelling is located on a non-farm tract, the SFH loan will not be accelerated simultaneously with sending out Attachments 7 and 8 of Exhibit A of Subpart S of Part 1951 of this chapter if the requirements of § 1965.25(d) or § 1965.26(c)(2) of Subpart A of Part 1965 of this chapter are met. If the aforementioned conditions of Subpart A of Part 1965 of this chapter cannot be met the SFH loan(s) must be accelerated at the same time the borrower is sent Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(3) *Offers by borrowers after acceleration of account.*

(i) *Farmer Programs (FP) accelerations.* This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the borrower

will have 30 days from the date of the acceleration notice to make payment in full to stop the acceleration, unless State law requires that the foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify the requirement.

(A) Payment in full [see Exhibit D, "Notice of Acceleration—Farmer Program Loan Accounts Secured by Real Estate and/or Chattels in Cases Not Involving Bankruptcy," of this subpart (available in any FmHA office)] may consist of the following means of fully satisfying the debt.

(1) Cash.

(2) Transfer and assumption.

(3) Sale of property.

(4) Voluntary conveyance.

(B) Payments which do not pay the account in full can be accepted subject to the following requirements:

(1) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(2) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed. In States where payments cannot be accepted unless the acceleration is reversed, the payments will not be accepted. A State supplement will be issued to address State law on accepting payments after acceleration.

(3) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result. Disposition of such payments will be made after consulting OGC.

(4) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations.* After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or

a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue



rental payments in accordance with their leases.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed. In Farmer Program cases (except graduation cases under Subpart F of Part 1951 of this chapter), the borrower must have received Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter, any additional notices required by Subpart S of Part 1951 of this chapter, and any appeal must have been concluded.

(f) *Amount of Government's bid.* Except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For Farmer Program loans, except as modified by paragraph (f)(6)(ii) of this section, the County Supervisor will document the Government's decision to either bid or not to bid on the property by the use of Exhibit G of this subpart. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024-A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

52. Section 1955.18 is amended by adding the introductory text, revising paragraph (h) and adding paragraphs (i), (j) and (k) to read as follows:

**§ 1955.18 Actions required after acquisition of property.**

The approval official may employ the services of local designated attorneys, of a case by case basis, to process all legal procedures necessary to clear the title of foreclosure properties. Such attorneys shall be compensated at not more than their usual and customary charges for

such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

(h) *Homestead Protection.* The County Supervisor will notify the borrower-owner of homestead protection rights by sending Exhibit L of Subpart S of Part 1951 of this chapter to the borrower-owner, certified mail, return receipt requested.

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending Exhibit M of Subpart S of Part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires CONACT real property. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights by sending Exhibit O of Subpart S of Part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, after FmHA acquires CONACT real property. The real property must have secured a CONACT loan. In the case of a conflict homestead protection and leaseback/buyback as the ownership or lease of the borrower's principal dwelling, the provisions of the homestead protection program will have priority over leaseback/buyback.

(j) *Priority disposal of inventory property.* Before any farm property which secured a Farmer Program loan is sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Subpart S of Part 1951 of this chapter) and the Homestead Protection program (see Subpart S of Part 1951 of this chapter). After the former owner/operator's rights have been concluded, the County Supervisor will dispose of the property in the priority order set forth in Subpart C of this part.

(k) *Debt Settlement.* For FP cases, the County Supervisor should debt settle any remaining FmHA indebtedness in accordance with Subpart B of Part 1956 and Part 1864 of the chapter (FmHA Instruction 456.1).

53. Section 1955.20 is amended by revising the introductory text of paragraph (b) to read as follows:

**§ 1955.20 Acquisition of chattel property.**

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens and the borrower can be released from liability

under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept voluntary conveyance of chattels is not authorized. Before a voluntary conveyance from a Farmer Program loan borrower can be accepted, the borrower must be sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter.

54. Exhibit G to Subpart A is added to read as follows:

**Exhibit G—Worksheet for Determining the Recovery Value of Farmer Program Real Estate Security**

- (Present owner/borrower) \_\_\_\_\_  
Refer to Exhibit I in FmHA Instruction 1951-S for guidance in estimating the holding period, incomes and expenses in this exhibit.
- Market Value of Property \$ \_\_\_\_\_  
(Part 7, Form FmHA 422-1)  
Estimated Holding Period In Years \_\_\_\_\_
  - Income
    - Annual Rent \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Annual Royalties \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Other Annual Income \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Annual % Land Appreciation \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Value gained due to restrictions that are placed on the farm such as Conservation Easement, Conservation Reserve Program (CRP), etc. = \$ \_\_\_\_\_
    - Other (describe) \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
  - Total Additions = \$ \_\_\_\_\_
  - Expenses
    - Total Prior Lienholder Indebtedness (P and I) = \_\_\_\_\_
    - Other Acquisitions Costs (taxes presently owed, closing costs, junior liens, etc.) List: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ = \_\_\_\_\_
    - Annual Taxes & Assessment \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Annual Building Depreciation \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Annual Management Costs \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Total Essential Repairs to Secure & Resell = \_\_\_\_\_
    - Annual % Decrease In Land Value (if applicable) \_\_\_\_\_ × Holding Period \_\_\_\_\_ = \_\_\_\_\_
    - Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = \_\_\_\_\_
    - Total Interest Cost: MKT Value, Regular\* Holding—  
\$ \_\_\_\_\_ × OL Rate \_\_\_\_\_ × Period \_\_\_\_\_ = \_\_\_\_\_
    - Value loss due to restrictions that are placed on the farm such as conservation, easements, etc., and Conservation Reserve Program (CRP), etc. = \$ \_\_\_\_\_

\*The regular operating loan rate more clearly reflects the Government's costs of money.



k. Hazardous Waste Clean-up Costs =

Total Deductions (Items A Through K) =

Recovery Value End of Holding Period:

1. Market Value ——— + 3. Total

Additions ——— - 4. Total Deductions

————— = Recover Value ———

County Supervisor \_\_\_\_\_

Date \_\_\_\_\_

55. Sections 1955.51 through 1955.100 are revised and Exhibit B to Subpart B is added to read as follows:

#### Subpart B—Management of Property

Sec.

1955.51 Purpose.

1955.52 Policy.

1955.53 Definitions.

1955.54 Redelegation of authority.

1955.55 Taking abandoned real or chattel property into custody and related actions.

1955.56 Real property located in Coastal Barrier Resources System (CBRS).

1955.57 Real property containing underground storage tanks.

1955.58-1955.59 [Reserved]

1955.60 Inventory real property subject to redemption by the borrower.

1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

1955.63 Suitability determination.

1955.64 Securing, maintaining, and repairing inventory property.

1955.65 Management of inventory and/or custodial real property.

1955.66 Lease of real property.

1955.67 Payment of liens.

1955.68 Payment of taxes.

1955.69 Insurance.

1955.70 Inspection of property.

1955.71 Vandalism or theft.

1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

1955.73-1955.79 [Reserved]

1955.80 Management of inventory chattel property.

1955.81 Exception authority.

1955.82 State supplements.

1955.83-1955.99 [Reserved]

1955.100 OMB control number.

#### Exhibits to Subpart B

Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration.

Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase.

#### Subpart B—Management of Property

##### § 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by

the Farmers Home Administration (FmHA) after abandonment by the borrower;

(b) Management of real and chattel property which is in FmHA's inventory;

(c) Management of real and chattel property which is security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating); and

(d) Community Program loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

##### § 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

##### § 1955.53 Definitions.

As used in this subpart, the following definitions apply:

##### CONACT or CONACT property.

Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

**Contracting Officer (CO).** CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

**Custodial property.** Borrower-owned real property and improvements which serve as security for an FmHA loan, have been abandoned by the borrower, and of which FmHA has taken possession.

**Farmer program loans.** This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

**Government.** The United States of America, acting through the FmHA, U.S. Department of Agriculture.

**Indian reservation.** All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

**Inventory property.** Real and chattel property and related rights to which the Government has acquired title.

**Loans to individuals.** Farmer Program loans, as defined above, whether to individuals or entities; Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

**Loans to organizations.** Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use (Grazing Associations) Business and Industrial (B&I) to both individuals and groups, Rural Development Loan Fund (RDLF), Intermediary Relending Program (IRP), Nonprofit National Corporation (NNC), Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

**Nonprogram (NP) property.** SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as



described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards; however, is so remotely located it would not serve as an adequate residential unit or an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

**Nonrecoverable costs.** Costs incurred after Government acquisition of title to the property and charged to an inventory account.

**Office of the General Counsel (OGC).** The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

**Program property.** SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

**Recoverable costs.** Costs charged to a borrower's account, paid or incurred prior to Government acquisition of the property.

**Servicing official.** For loans to individuals as defined in this section, the servicing official is the County Supervisor. For insured B&I loans, the servicing official is the State Director. For Rural Development Loan Fund and Intermediary Relending Program loans, the servicing official is the Director, Business and Industry Division. For Nonprofit National Corporations loans, the servicing official is Director, Community Facility Division. For all other types of loans, the servicing official is the District Director.

**Socially disadvantaged individual.** An individual that has been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

**Suitable property.** Property other than SFH or MFH, that could be used to carry out the objectives of a FmHA loan program with financing provided through that program. For farm inventory property, suitable property is farmland that can be used for general farming purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. Such farmland should produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm or part of a farm rather than a rural residence. Farmland will be classified as suitable regardless of its size, value, or quality unless the County Committee determines it cannot

be used for farming purposes. The County Committee suitability determination is independent of any decision by FmHA to make or not to make a farm ownership loan on the property. Leaseback/buyback rights will be offered in accordance with Subpart S of Part 1951 of this chapter whether or not the property is considered surplus or suitable.

**Surplus property.** Real property acquired pursuant to the CONACT and other Acts authorizing agriculture lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 3 years after acquisition. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 3-year period will be extended to compensate for the period of time that property was not available for sale.

#### § 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area

Supervisors in the Western Pacific Territories and American Samoa.

#### § 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) **Determination of abandonment.** (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s), if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmers Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of this part. In farmer program cases, borrowers must receive Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) **Taking security property into FmHA custody.** When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of this part, unless the borrower can be located and voluntary



liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 of Subpart A of Part 1965 of this chapter will be followed.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this chapter.

(ii) If the unpaid loan balance plus recoverable costs exceeds the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA Instruction 2024-A (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter)

recommending that foreclosure be initiated in accordance with § 1955.15 of Subpart A of this part and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of before the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody.

Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of \$1,000 per property must have prior approval of the state Director.

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be handled in accordance with FmHA Instruction 1951-B (available in any FmHA office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid by preparing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and processing Form FmHA 2024-1, "Miscellaneous Payment System," or Form Ad 838, "Purchase Order" and processing Form FmHA 838B, "Invoice-Payment Certification," as appropriate, according to FmHA Instruction 2024-A (available in any FmHA office) and the respective FMI's.

#### § 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations in paragraphs (a)(1), (a)(2) or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service. The Regional Director may or may not concur that the proposed action does or does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.



(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

**§ 1955.57 Real property containing underground storage tanks.**

Within 30 days of acquisition of real property into inventory, FmHA must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are exempt from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under; (i) The

Natural Gas Pipeline Safety Act of 1968; (ii) the Hazardous Liquid Pipeline Safety Act of 1979; or (iii) for an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA inventory property with a reportable underground storage tank will be informed of the reporting requirement, and provided a copy of the form filed by FmHA.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA will comply with such requirements and a State supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

**§§ 1955.58-1955.59 [Reserved]**

**§ 1955.60 Inventory real property subject to redemption by the borrower.**

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease

the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of this part.

**§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property**

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State law permits and OGC has given authorization, eviction may be affected through State courts rather than Federal courts. In those cases, a State supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

**§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.**

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time



specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list to the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted according to FmHA Instruction 1951-B (available in any FmHA office) and applied in the following order:

- (i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).
- (ii) To an unsatisfied balance on the FmHA loan account, if any.
- (iii) To the borrower, if whereabouts are known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs. Refer to FmHA Instruction 2024-A (available in any FmHA office) for guidance.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State

Director shall, with the advice of OGC, issue a State supplement outlining the method to be followed which will comply with applicable State laws.

#### § 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file. For farm property, the County Committee will classify or reclassify real property that is farmland as being suitable for farming operations for disposition as suitable property unless the property, including property subdivided, cannot be used to meet any general farm purposes including being used as a start-up or add-on parcel of farmland. Refer to § 1955.53 of this subpart for guidance.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus. Farm property will be classified by the applicable County Committee. Property acquired under the CONACT which is originally classified as suitable may be reclassified as surplus because of physical damage such as fire, flood, sheet erosion or falling water table, which occurs, or change in economic conditions such as rising cost of production inputs, viable market outlets and obsolescence, which affect its suitability for program purposes, or, if not sold within three years after acquisition, it must be declared surplus. The 3-year period will be extended to compensate for any period of time the property was withheld from the market because its sale may have had a negative impact on farm real estate values or other administrative reasons. Form FmHA 1955-3A must be processed to update a change in the property suitability classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Grouping and subdividing farm properties larger than family-size.* The County Supervisor will subdivide farm properties larger than family size whenever possible into parcels for the purpose of creating one or more suitable farm properties based on recommendations from the County Committee. Such land shall be subdivided into parcels of land the shape and size of which are suitable for farming, the value of which shall not exceed the insured farm ownership loan limit of \$200,000. The County Committee decision will be documented on Form

FmHA 440-2, "County Committee Certification or Recommendation." In addition, a map of the property showing the new boundaries will also be attached to Form FmHA 440-2. The County Supervisor may also group two or more individual properties into one or more suitable farm properties based on recommendations from the County Committee. The environmental effects will also be considered pursuant to Subpart G of Part 1940 of this chapter. Also refer to § 1955.140 of Subpart C of this part. The State Director, with prior approval of OGC, may issue a State supplement addressing any applicable State laws. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024-A (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

(c) *Housing property.* Property which secured housing loans will be classified as "program" or "nonprogram." Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-program dwelling as nonprogram simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made program, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as program may be reclassified as nonprogram if physical damage occurs which is not economically feasible to repair. Form FmHA 1955-3A must be processed to update a change in the property suitability classification. Where a SFH property is situated on land in excess of a minimum adequate site as defined in § 1944.11 of Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-program dwelling as nonprogram solely because it is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property



may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 2024-A (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(d) *Authority for determining suitability*—(1) *County Committee*. The County Committee will determine suitability of farm property, with the advice of the County Supervisor if the committee is uncertain of the proper classification.

(2) *County Supervisor*. The County Supervisor will determine suitability of SFH property with the advice of the District Director if the County Supervisor is uncertain of the proper classification for the SFH property.

(3) *District Director*. The District Director will assist the County Supervisor in determining suitability of SFH property as provided in paragraph (c) of this section.

(4) *State Director*. The State Director will determine suitability of all types of property other than farm property. With the recommendations of the District Director, the State Director will make determinations on MFH property.

#### § 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of the inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3b (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy*. After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or eligible for listing on the National Historic Register of Historic Places in whole or in part will be repaired as necessary to protect their historic integrity after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except for SFH and

MFH properties being sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH*. SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s) landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Nonprogram property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103 of Subpart C of this part will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of this part will apply. To be economically feasible, repairs should increase the expected "as is" sale price by at least the cost of the repairs.

(2) *MFH*. MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in an "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of this part is subject to the occupancy restrictions set forth in § 1955.116 of Subpart C of this part.

(3) *Farm property*. Except as provided in paragraph (a) of this section, only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place the farm in marketable condition. Conservation of soil, water and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS), through the development of conservation practices for the farm property. The County Supervisor will request that the SCS identify the location of any highly erodible land and

recommend specific conservation practices to control erosion. The County Supervisor will carry out those conservation practices that are essential to preserve and protect the property and to place it in marketable condition. Any differences between FmHA and SCS regarding the need for a certain practice will be resolved in the manner indicated in § 1955.137(c)(2) of Subpart C of this part. Recommendations will also be requested from the U.S. Fish and Wildlife Service regarding fish and wildlife conservation measures. See Exhibit A of FmHA Instruction 2000-LL (available in any FmHA office) for further information.

(4) *Property other than housing and farms*. Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Authority*. Program and contracting authority is contained in FmHA Instruction 2024-A (available in any FmHA office).

#### § 1955.65 Management of inventory and/or custodial real property.

(a) *Authority*—(1) *County Supervisor*. The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secures) loans to individuals as defined in this subpart.

(2) *State Director*. The State Director will select the management method to be used for property which secures (or secures) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods*. Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection of repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase



arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(e) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 2024-A (available in any FmHA office).

(1) *Management contracts.*

Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH, this plan should follow the

guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of an MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," subject to FmHA's approval. Contracts for management of farm inventory property will be offered on a competitive bid basis, giving preference to persons who live in, and own and operate qualified small businesses in the area where the property is located in accordance with the provisions in Exhibit J, paragraph II C, "Procurement Preference Program," of FmHA Instruction 2024-A (available in any FmHA office).

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024-A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for an MFH project within the contracting authority outlined in FmHA Instruction 2024-A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitation for State Office staff outlined in FmHA Instruction 2024-A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action

will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specification of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparer of his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 2024-A (available in any FmHA office).

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024-P (available in any FmHA office) by completion of Form AD 838 or SF 1034 and processing Forms FmHA 2024-1 or FmHA 838B, as appropriate in accordance with the respective FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of SF 1034 or AD 838 and processing Forms FmHA 2024-1 or FmHA 838B, as appropriate, according to the respective FMIs.

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.



**§ 1955.66 Lease of real property.**

When inventory real property, other than MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee or FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart. The requirements of Subpart G of Part 1940 of this chapter will also be met for all leases.

(a) *Authority to approve lease of property*—(1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property.*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* (A) Any property which secures an insured loan made under the CONACT and which contains a dwelling (whether located on or off the farm) that is possessed and occupied as a principal residence by a prior owner who was personally liable for a Farmer Program loan must first be considered for Homestead Protection in accordance with Subpart S of Part 1951 of this chapter. In addition, the former owner, spouse and child(ren) of the former owner and any entity members must first be considered for leaseback/buyback in accordance with Subpart S of Part 1951 of this chapter.

(B) The County Supervisor may approve the lease of farm property when a feasible plan of operation can be

developed in accordance with § 1924.57 of Subpart B of Part 1924 of this chapter.

(C) When a lease with an option to purchase is signed, the lessee should be told that FmHA cannot make a commitment to finance the purchase of the property in the future. Except for leases with an option to purchase, special stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event and the lessee will retain the right to harvest growing crops and rental payment will be prorated between the Government and the purchaser of the property.

(D) The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property.

(E) Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. All prospective lessees will be notified in writing of the presence of highly erodible land, converted wetlands and wetlands on inventory property. This notification will enclose a copy of Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetland or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of Subpart G of Part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity. Additionally, a copy of Form SCS-CPA-26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955-20, "Lease of Real Property," prohibiting the use of the property as specified above.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of

utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Selection of lessees for farm property*—(1) *Farm plans.* All prospective lessees will be required to submit a farm plan for the upcoming crop year and to submit evidence of their income. The County Supervisor must determine that the prospective lessee has the financial resources and farm management skills and experience that are sufficient to assure a reasonable prospect that the terms of the lease can be fulfilled. The County Supervisor may require verification of income and/or a credit report (to be paid for by the prospective lessee).

(2) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the approval official will make a special effort to insure that those prospective lessees are reached in the marketing area who traditionally would not be expected to lease FmHA farm inventory properties or apply for farm ownership loan assistance because of existing racial or ethnic prejudice. Emphasis will be placed on providing technical assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1910 of this chapter.

(3) *Rights of previous owner and notification.* For leaseback/buyback rights of former borrower/owners, refer to Subpart S of Part 1951 of this chapter. Grazing Association, Indian Land Acquisition, and other organization type loans as defined in § 1955.53 of this subpart, are not subject to the leaseback/buyback and Homestead Protection provisions of Subpart S of 1951 of this chapter.

(d) *Property securing Farmer Program loans located within an Indian Reservation.* (1) If real property securing a Farmer Program loan is located within an Indian Reservation and the owner or



former owner is a member of such Indian tribe, such member-owner will be offered leaseback/buyback rights pursuant to Subpart S of Part 1951 of this chapter. State Directors will contact the Bureau of Indian Affairs Agency supervisor to determine the boundaries of Indian Reservations and Indian allotments. A State supplement will be issued to identify the boundaries of such Indian Reservations and Indian allotment lands. If the former owner is a member of the tribe and does not want to exercise leaseback/buyback rights, the spouse and children of the former member-owner will be offered leaseback/buyback rights pursuant to Subpart S of Part 1951 of this chapter. The previous operator of property located within an Indian Reservation whose former owner is a member of the tribe having jurisdiction of such property is not entitled to leaseback/buyback rights and will not be notified.

(2) The tribe of which the former owner is a member will also be notified by letter, similar to Exhibit B of this subpart, at the time FmHA acquires the property, of the potential of such member-former owner's property being available for leaseback/buyback and advise the tribe of additional leaseback/buyback priority rights as follows (unless the tribe shall have established a different priority order for these additional leaseback/buyback rights):

(i) To an Indian member of the Indian tribe that has jurisdiction over the reservation within which the real property is located;

(ii) To an Indian corporate entity;

(iii) To the Indian tribe.

(3) If any individual, Indian corporate entity or Indian tribe covered in paragraphs (d)(1) and (d)(2) wishes to lease or purchase the property, the County Supervisor must determine the prospective lessee or purchaser has the financial resources and management skills and experience that is sufficient to assure a reasonable prospect that the terms of the lease or purchase agreement can be fulfilled. Adverse decisions will be appealable pursuant to Subpart B of Part 1900 of this chapter.

(4) If the real property is not leased or purchased by any individual, Indian corporate entity or Indian tribe pursuant to paragraphs (d)(1) and (d)(2) and all appeals have concluded, the State Director shall transfer the property to the Secretary of the Interior.

(5) Properties within a reservation formerly owned by entities and non-tribal members will be treated as regular inventory that is not located on an Indian Reservation and disposed of pursuant to this subpart and Subpart C of this part. Leaseback/buyback rights

will be given to the former owner, spouse, or children of the former owner, as well as any previous operators as outlined in Subpart S of Part 1951 of this chapter.

(e) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations in the lease in accordance with the FMI for Form FmHA 1955-20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus  $\frac{1}{2}$  of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will generally be leased for market rent for that type property in the area. However, such property may be leased for less than market rent with prior approval of the Administrator.

(f) *Property in a flood or mudslide hazard area.* Inventory property located in areas identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the

servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(g) *Highly erodible land.* Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the leases, conservation practices specified by the SCS and approved by the FmHA.

(h) *Lease of farm property with option to purchase.* Except for property that was pledged to secure a loan to an organization, a lessee may be given the option to purchase farm property. Terms of the option will be set forth as part of the lease as a special stipulation in accordance with the FMI for Form FmHA 1955-20. The purchase price (option price) will be the lower of the capitalization value or the market value, as of the date the option is exercised, of the farm as set forth in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and supported by a current appraisal on Form FmHA 422-1, "Appraisal Report-Farm Tract." If there is more than a 5 percent difference between the market value and the capitalization value, the appraisal will be reviewed by the State Director's designee. The reviewer will determine if the appraisal values are adequately supported. A lease with option to purchase to individuals with leaseback/buyback rights in accordance with Subpart S of Part 1951 of this chapter will be from 1 year up to 5 years. The lessee with leaseback/buyback rights will select the term of the lease. For those individuals that do not have leaseback/buyback rights, a lease with option to purchase farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price. Indian tribes or tribal corporations which utilize the Indian Land Acquisition program will be allowed to purchase the property for its market value less the contributory value of the buildings, in accordance with Subpart F of Part 1942 of this chapter. For Preservation Loan Programs, refer to Subpart S of Part 1951 of this chapter. Denials of applications for or disputes over terms and conditions of a lease are appealable, pursuant to Subpart B of Part 1900 of this chapter.

(i) *Advertising farm property for lease.* Advertisement is not required when an existing lease will be renewed or renegotiated with the present lessee or when the property is being offered



pursuant to leaseback/buyback. Otherwise, to assure fair and equitable treatment to all interested parties, public notice will be given of the availability of each inventory property for lease. Public notice means, as a minimum, advertisement in a newspaper or periodical that has a major circulation in the area where the inventory property is located. The public notice shall include as a minimum:

(1) All of the applicable qualifications, terms, conditions, restrictions, and stipulations associated with the lease, and how and when a lessee will be selected;

(2) A description of the property including its location and the presence of any natural hazards such as floodplains, wetlands and special mudslide hazard areas;

(3) The closing date and time for receiving written offers to lease;

(4) The terms of the lease;

(5) A statement that the Government reserves the right to reject all offers to lease;

(6) A statement that the property will be leased without regard to race, color, religion, sex, age, national origin or marital status.

(j) *Costs.* The costs of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 1955-D (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(k) *Security deposit.* A security deposit in at least the amount of one month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposit will be required and the amount of the deposit with advice from the State Office staff is requested. Security deposits will be remitted according to FmHA Instruction 1951-B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit will be requested by memorandum to return the deposit to the servicing office

for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate.

For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944-9, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. —, formerly owned by —.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(l) *Lease form.* Form FmHA 1955-20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial or inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(m) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951-B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(n) *Termination of lease of inventory property.* When a lease is terminated, or when the property is sold before expiration of the term shown of the lease submitted to the Finance Office, the servicing official will notify the Finance Office of the termination and the effective date of termination according to the FMI for Form FmHA 1955-20.

(o) *Leasing after expiration of Leaseback/Buyback rights.* Except for property covered by paragraph (d) of this section, once all rights under leaseback/buyback (see Subpart S of Part 1951 of this chapter) have expired, the property may be leased in

accordance with the provisions of this subpart or sold in accordance with the provisions of Subpart C of this part.

(p) *Socially disadvantaged program.* Inventory farms will be targeted for socially disadvantaged loans as authorized in § 1943.13 of Subpart A of Part 1943 of this chapter.

#### § 1955.67 Payment of liens

(a) If real estate was acquired subject to a lien, the servicing official may authorize payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024-P (available in any FmHA office) by preparation of SF-1034 and submission of Form FmHA 2024-1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost. If it is later determined that continuing to make payments on prior liens is no longer in the best interest of the Government for reasons such as, but not limited to, declining property values or uninsured property losses, the State Director may:

(1) Convey the property to the prior lienholder if the lienholder will agree to accept the conveyance in full satisfaction of the prior lien; or

(2) Discontinue payments to the lienholder, and allow the lien to be foreclosed.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF-1034 and Form FmHA 2014-1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

#### § 1955.68 Payment of Taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A state supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate



taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable or program property.*

When property is suited for program purposes, the servicing official will prepare SF 1034 and process Form FmHA 2024-1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Nonprogram (NP) housing property.* When property is classified as NP and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 **Insurance.**

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area and operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF-1034 and submission of Form FmHA 2024-1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as

provided in paragraph (a) of this section. If, however, the prior lienholders mortgage requires the borrower to carry insurance, FmHA may provide the required insurance, if necessary, to prevent foreclosure by the prior lienholder.

§ 1955.70 **Inspection of property.**

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, wherever possible, and documented in the inventory file.

§ 1955.71 **Vandalism or theft.**

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy of the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director, after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 **Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).**

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; the State Director may redelegate this

authority to County Supervisors or District Directors.

§§ 1955.73-1966.79 [Reserved]

§ 1955.80 **Management of inventory chattel property.**

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955-D (available in any FmHA office).

(b) *Contracting for services.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120-10 in accordance with FmHA Instruction 1955-D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955-50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

§ 1955.81 **Exception authority.**

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the



authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

#### § 1955.82 State supplements.

State supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

#### §§ 1955.83-1955.99 [Reserved]

#### § 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0110.

#### Exhibit A—Memorandum of Understanding Between the Federal Emergency Management Agency and the Farmers Home Administration

Note.—This memorandum is available in any FmHA office.

#### Exhibit B—Notification of Tribe of Availability of Farm Property for Lease or Purchase

(To Be used by FmHA To Notify Tribe of Leaseback/Buyback)

From: County Supervisor

To: (Name of Tribe and address)

Subject: Availability of Farm Property for Lease or Purchase

[To be used After 190-Day Period Has Expired]

Recently Farmers Home Administration (FmHA) acquired title to — acres of farm real property located within the boundaries of your Reservation. The previous owner of this property was —. We have advised the previous owner of leaseback/buyback rights and in the event the previous owner, previous owner's spouse, or children do not enter into a lease or purchase

agreement by (enter the date 190 days after the date of acquisition), the property will be available to lease or purchase to persons who are members of your tribe, an Indian Corporate entity, or the tribe itself. Our regulations provide for those three distinct priority categories which may be eligible; however, you may revise the order of the priority categories and may restrict the eligibility to one or any combination of categories. Following is a more detailed description of these categories:

1. Persons who are members of your Tribe. Individuals so selected must be able to meet the eligibility criteria for the purchase and/or lease of Government inventory property and be able to carry on a family farming operation. Those persons not eligible for FmHA's regular programs may also purchase this property as a Non-Program loan on ineligible rates and terms.

2. Indian corporate entities. You may restrict eligible Indian corporate entities to those authorized by your Tribe to lease and/or purchase lands within the boundaries of your Reservation. These entities also must meet the basic eligibility criteria established for the type of assistance granted.

3. The Tribe itself is also considered eligible to exercise their right to lease and/or purchase the property. If available, Indian Land Acquisition funds may be used or the property financed as a Non-Program loan on ineligible rates and terms.

We are requesting that you notify the local FmHA County Office of your selection or intentions within 45 days of receipt of this letter, regarding the lease and/or purchase of this real estate. If you have questions regarding eligibility for any of the groups mentioned above, please contact our office. If the Tribe wishes to lease or purchase the property, but is unable to do so at this time, contact with the FmHA County Office should be made.

Sincerely,

County Supervisor.

#### Subpart C—Disposal of Inventory Property

56. Section 1955.102 is revised to read as follows:

#### § 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that will enable a qualified applicant for one of Farmers Home Administrations (FmHA's) loan programs to meet the objectives of that loan program, preference will be given to the program applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: to sell

CONACT property as Rural Housing (RH) property; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

57. Section 1955.103 is amended by revising the definitions of CONACT or CONACT property, Suitable property and Surplus property and by adding in alphabetical order the definitions of Capitalization value, Farmer Program loans, Leaseback/Buyback, Homestead Protection, Indian reservation, Owner, Previous operator and Socially disadvantaged applicant to read as follows:

#### § 1955.103 Definitions.

*Capitalization value.* The value determined in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

*CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Emergency Agricultural Credit Act of 1984; the Food Security Act of 1985; and other statutes giving agricultural lending authority to FmHA.

*Farmer program loans.* This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST) and Rural Housing loans for farm service buildings (RHF).

*Homestead protection (FP only).* The program which permits former Farmer Program borrowers to lease their former principal residence with an option to buy. See Subpart S of Part 1951 of this chapter.

*Indian Reservation.* All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian Tribe in the State of Oklahoma; or all Indian allotments the



Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a federally recognized Indian Tribe.

**Leaseback/Buyback (FP only).** The program which permits certain former owners and certain former operators to repurchase or lease their former farm. See Subpart S of Part 1951 of this chapter.

**Owner.** An individual or an entity which owned the farm but who may or may not have been operating the farm at the time the farm was taken into inventory.

**Previous operator.** An individual or an entity who based the farm which collateralized a CONACT loan and conducted the day to day business at the time the farm was taken into inventory. The previous operator does not need to be an FmHA borrower.

**Socially disadvantaged applicant.** An applicant/borrower who, because of their identity as a member of a group, has been subjected to racial or ethnic prejudice or cultural bias without regard to their individual qualities.

**Suitable property.** Property other than SFH or MFH that could be used to carry out the objectives of an FmHA loan program with financing provided through that program. For farm inventory property, farmland that can be used for general farming purposes, including those farm properties that may be used as a start up or add-on parcel of farmland. Such farmland should produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm or a part of a farm rather than a rural residence. Farmland will be classified as suitable regardless of its size, value, or quality unless the County Committee determines it cannot be used for farming purposes. The County Committee suitability determination is independent of any decision by FmHA to make or not to make a farm ownership loan on the property. Leaseback/buyback rights will be offered in accordance with Subpart S of Part 1951 of this chapter whether or not the property is considered surplus or suitable.

**Surplus property.** Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section, that is neither farmland, nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real estate property which is not sold within 3 years after

acquisition. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulations compensate for the period of time the property was not available for sale.

58. Section 1955.105 is revised to read as follows:

**§ 1955.105 Real property affected (CONACT).**

(a) **Loan types.** Sections 1955.106-1955.109 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership (FO); Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); Softwood Timber (ST); Community Facility (CF); Water and Waste Disposal (WWD); Reserve Conservation and Development (RC&D); Watershed (WS); Association Recreation; EOC: Rural Renewal; Water Facility; Business and Industry (B&I); Rural Development Loan Fund (RDLF); Intermediary Relending Program (IRP); Nonprofit National Corporation (NNC); Irrigation and Drainage; Shift-in-Land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations. Leaseback/Buyback and Homestead Protection, as set forth in Subpart S of Part 1951 of this chapter, are only applicable to Farmer Program loans as defined in § 1955.103 of this subpart.

(b) **Controlled substance conviction.** In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(c) **Effects of farm property sales on farm values.** State Directors will analyze farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. Such analysis will be carried out in January of each year and as often throughout the year as necessary to reflect changing farm real estate conditions. If the analyses of farm real estate conditions indicate that such sales would put downward pressure on farm real estate values in any area, all farm properties within the area affected will be withheld from the market and managed in accordance with the provisions of Subpart B of this Part until such time that a subsequent analysis indicates otherwise. The State Director will notify, in writing, the County Supervisor(s) servicing those areas that are restricted from selling farm inventory property. State Directors in consultation with other lenders, real estate agents, auctioneers, and others in the community will analyze all available information such as:

- (1) The number of farms and acres that FmHA expects to acquire in inventory.
- (2) The number of farms and acres other lenders expect to acquire in inventory.
- (3) The number of farms and acres that FmHA currently has in inventory.
- (4) The number of farms and acres other lenders currently have in inventory.
- (5) The number of farms not included in paragraphs (a)(3) and (a)(4) of this section which are currently listed for sale.

(6) Published real estate values and trend reports such as those available from the Economic Research Service or professional appraisal organizations.

(d) **Highly erodible land.** Leases of farm inventory property land that is "highly erodible land" as determined by the SCS must contain, as requirements of the lease, conservation practices specified by the SCS and approved by the FmHA as a condition for sale. Refer to § 1955.137(d) of this subpart for implementation requirements.

59. Sections 1955.106 through 1955.108 are revised and redesignated as §§ 1955.107 through 1955.109 and § 1955.109 is revised and redesignated as § 1955.106 to read as follows:

**§ 1955.106 Disposition of farm property.**

(a) **Rights of previous owner and notification.** Before any farm property which secured a Farmer Program loan is



sold, the County Supervisor shall initially attempt to dispose of the property in accordance with the Leaseback/Buyback program (see Subpart S of Part 1951 of this chapter) and Homestead Protection program (see Subpart S of Part 1951 of this chapter). If the farm property which secured a Farmer Programs loan is located within an Indian Reservation and the former owner is a member of the Tribe that has jurisdiction over the reservation, their Leaseback/Buyback rights will be given pursuant to § 1955.66(d) of Subpart B of this part.

(b) *Racial and ethnic consideration.* In accordance with the policies set forth in Exhibit B of Subpart A of Part 1943 of this chapter, the County Supervisor will make a special effort to insure that prospective purchasers who traditionally would not be expected to apply for farm ownership loan assistance because of existing racial or ethnic prejudice or cultural bias are informed of the availability of the social disadvantaged program. Emphasis will be placed on providing assistance to such socially disadvantaged individuals in accordance with the applicable sections of Subpart A of Part 1943 of this chapter. Suitable farm inventory property that has been targeted for socially disadvantaged individuals will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located.

(c) *Non Program (NP) borrowers.* Non Program (NP) borrowers are not eligible for leaseback/buyback or Homestead Protection provisions as set forth in Subpart S of Part 1951 of this chapter. When it is determined that all conditions of § 1951.558(b) of Subpart L of Part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and will be eligible for leaseback/buyback and Homestead Protection.

#### § 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955-105(c) of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to program applicants in accordance with FmHA regulations that apply to the appropriate loan program. Real property will be managed in accordance with the provisions of Subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.108 of this subpart.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955-40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least, twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955-40 or Form FmHA 1955-41, "Notice of Sale," will be posted in a prominent place in the County Office. If a program applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian Reservations as defined in § 1955.103 of this subpart shall be responsible for notifying those parties listed in § 1955.66(d)(2) of Subpart B of this part.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Except for farm property, property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale. Farm property will be sold for the lower of the market value or the price that reflects the average income that may be reasonably anticipated to be generated from farming such property. Therefore, the price will be the lower of the capitalization value or the market value as determined by an appraisal made in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). If the capitalization value and the market value vary as much as 5 percent, the appraisal will be reviewed by an appraiser designated by the State Director to determine if the appraisals are supported by comparable sales data.

(d) *Credit sale procedure.* A credit sale to program applicants will be processed as follows:

(1) Form FmHA 1955-45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales.

(2) The County Committee will certify to the applicant's eligibility on Form FmHA 440-2 in accordance with program eligibility requirements when required by the FmHA regulation that applies to the appropriate loan program.

(3) Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(4) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(5) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously must be the same as for an initial loan except that:

(i) Form FmHA 1955.49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of General Counsel (OGC) will be used.

(ii) The buyer will pay attorney's fee and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(6) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955.50, "Advice of Inventory Property Sold," according to the FMI.

(7) Property sold on credit sale may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land and wetlands on inventory property.

(e) *Selection of purchaser.* (1) *Nonfarm property.* Except for farm property, when more than one acceptable offer is received during business hours on the same day, the order in which they will be considered in time order received. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.



(2) *Farm property.* Suitable farmland may only be sold to operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family-sized farms, as determined by the County Committee. However, suitable farmland larger than family size, may be sold to the former owner or the spouse or the child(ren) of the former owner in accordance with leaseback/buyback provisions of Subpart S of Part 1951 of this chapter. Any credit sale of a suitable farm larger than the family-size farm would be at ineligible rates and terms. In determining if the property is a family-size farm, the County Committee should refer to the definitions of family farm and farm as outlined in § 1943.4 of Subpart A of Part 1943 of this chapter. In selling suitable farmland, priority must be sold to persons eligible for FP loans, including individuals approved for, but who, as of January 6, 1988, have not received such loans. If two or more eligible operators of not larger than family-sized farms, as of the time immediately after the contract of sale or lease is entered into, wish to purchase a suitable farm, the County Committee will make the selection. The reasons explaining the County Committee's selection of the applicant will be fully documented on Form FmHA 440.2. The County Committee will give a priority to those eligible individuals that have pending applications filed but have not received the loan assistance and make a selection from those eligible individuals that have the greatest need for farm income and best meet the criteria for eligibility, for farm ownership loan assistance (refer to § 1943.12 of Subpart A of Part 1943 of this chapter).

**§ 1955.108 Sale of surplus property (CONACT).**

Except where a lessee is exercising the option to purchase under Homestead Protection and Leaseback/Buyback provisions of Subpart S of Part 1951 of this chapter surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Property which has been classified as suitable will be held in inventory for 3 years. If during the 3 year period, the property was withheld from the market because it was determined its sale would have had a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 3 year period will be extended to compensate for the period of time the property was not available

for sale. After the 3 year term the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. Additionally, all prospective buyers will be notified in writing as a part of the property advertisement of the presence of highly erodible land, converted wetlands and wetlands on inventory property.

(a) *Rate and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with Subpart S of Part 1951 of this chapter. Surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus 1/2 percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for all other surplus property will be the current Farmer Programs ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). Loans made on ineligible terms will be closed at the interest rate in effect at the time the loan was approved. The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a downpayment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

(b) *Advertising sale of surplus property.* When possible, the sale of surplus CONACT property should be handled by County Supervisors and District Directors. FmHA will advertise for sale surplus property for sealed bid, negotiated sale or auction by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955-40 or Form FmHA 1955-41, "Notice of Sale," will be posted in a prominent place in the County Office.

(c) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction after it has been in inventory for 3 years. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least \_\_\_\_\_ percent of the highest offer requiring credit. [\*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.] Equally acceptable sealed bid offers will be decided by lot, except for the sale of farm property, when an acceptable sealed bid from an operator of not larger than family-size farms wish to purchase a farm property, the County Committee will select the operator. The reasons explaining the County Committee's selection of the best qualified applicant will be fully documented on Form FmHA 440-2. The County Committee will give a priority to those eligible individuals that have pending applications filed but have not received the loan assistance and make a selection from those eligible individuals that have the greatest need for farm income and best meet the criteria for eligibility, for farm ownership loan assistance (refer to § 1943.12 of Subpart A of Part 1943 of this chapter).

(d) *Negotiated sale.* If no acceptable bid is received either from a bid sale or at a public auction, the State Director may sell surplus property or suitable property which has been in inventory for 3 years at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. If the real estate property was withheld from the market because it was determined its sale would have had a negative impact on the farm real estate values or for other administrative purposes, such as



statutory or proposed regulation revisions, the 3-year period will be extended to compensate for the period of time the property was not available for sale. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955-46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least \_\_\_\_\_ percent of the highest offer requiring credit. [\*Refer to Exhibit B of FmHA Instruction 440.1 available in any FmHA office) for the current percentage.] Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other part except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024-F (available in any FmHA office). Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," will be used to obtain other purchases and services. In either case, Form FmHA 2024-1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024-P (available in any FmHA office).

(e) *Sale through real estate brokers.* The State Director may authorize use of real estate brokers to sell surplus CONACT real property at the market

value in accordance with § 1955.130 of this subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

#### § 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431-2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application including financial information required for the respective loan program.

(b) *Credit sale approval authority for Farmer Program loans.* County Supervisors, District Directors and State Director are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter (available in any FmHA office.) County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales or ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(c) *Form of payment.* Payments at closing will be made in the form of cash, cashier check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(d) *Farm real property.* Upon acceptance by the approval official, County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(e) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955-45 or FmHA 1955-46, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(f) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's downpayment.

(g) *Closing and reporting sales.* Title clearance, loan closing and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955-49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955-50 in accordance with the FMI.

(h) *Classification.* Credit sales on ineligible terms will be classified NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modification to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

60. Section 1955.122 is amended by redesignating paragraphs (a) through (d) as (b) through (e), revising newly designated paragraphs (b) and (e) and adding new paragraphs (a) and (f) to read as follows:

#### § 1955.122 Method of sale (chattel).

(a) *Repurchase by former borrower-owner.* "If the former borrower-owner is participating in Leaseback/Buyback and/or Homestead Protection, the former borrower-owner will have the first opportunity to repurchase the chattel property which may have been conveyed to FmHA by the borrower. The sale will be for market value and may be for cash or a FmHA credit sale. Prior to the borrower conveying chattel property to FmHA, the County Supervisor may enter into an agreement with the borrower, as part of a leaseback/buyback Agreement or Homestead Protection Agreement (Exhibits K and O of Subpart S of Part 1951 of this chapter) to permit the borrower to repurchase the chattel property upon FmHA's acquisition of the



real estate and chattel property. The borrower must repurchase all chattel property conveyed to FmHA and may not pick and choose items to purchase. If the spouse or children of the previous owner, entity members of the previous owner or the immediate previous operator are leasing or purchasing the property under the leaseback/buyback program, such person may also have first opportunity to purchase all chattels conveyed to FmHA at the time the previous owner conveyed the real property.

(b) *Regular sale.* Chattels will be sold by FmHA employees at market value to program applicants. Form FmHA 440-21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(e) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least \_\_\_\_\_ percent of the highest offer requiring credit. [\*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955-47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951-B (available in any FmHA office). A State supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on negotiated sales and to insure compliance with State laws.

(f) *Notification.* In many States the original owner of the chattel property must personally be notified of the sale date and method of sale within a certain time prior to the sale. The State Director then will issue a State supplement clearly stating what notices are to be sent, if any. County Supervisor will review State supplements to determine what notices must be sent to the previous owner of the chattel property prior to FmHA taking action to sell the property.

61. Section 1955.123 is amended by revising paragraph (a) to read as follows:

**§ 1955.123 Sale procedures (chattel).**

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels,

credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least \_\_\_\_\_ percent of the highest offer requiring credit.

[\*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed five years. The interest rate for the ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440-1 (available in any FmHA office). Form FmHA 431-2, Form FmHA 440-32, "Request for Statement of Debts and Collateral," or any other financial statement considered appropriate may be used to show financial capability. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901-A (available in any FmHA office.) The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter. County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of FmHA Instruction 1901-A (available in any FmHA office.)

62. Section 1955.128 is revised to read as follows:

**§ 1955.128 Appraisers.**

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the Assistant Administrator, Housing, when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the

number and type properties (such as large farms and business property) requiring valuation. For Farmer Program properties, the fee appraisers must include the market value of the property and the value determined by the annual production value or capitalization value. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers.) Appraisers may not purchase property they have appraised.

63. Section 1955.139 is amended by revising the section heading, the introductory text of paragraph (a)(3), paragraphs (a)(3)(i)(A), (a)(3)(i)(B) and (a)(3)(iii) and adding paragraphs (a)(3)(v), (a)(3)(vi) and (c) to read as follows:

**§ 1955.139 Disposition of real property rights and title to real property.**

(a) \* \* \*

(3) For farm properties only, easements, restrictions, or the equivalent thereof may be granted or sold separately from the underlying fee or sum of all other rights possessed by the Government if such conveyances are for conservation purposes and are transferred to a unit of local, State, or Federal government or a private nonprofit organization.

(i) \* \* \*

(A) Fish and wildlife habitats of local, regional, State, or Federal importance,

(B) Floodplain and wetland areas as defined in Executive Orders 11988 and 11990,

(iii) An easement, restriction or the equivalent thereof may be granted or sold for less than market value to a unit of local, State, Federal government or a private nonprofit organization for conservation purposes. If such a conveyance will adversely affect the FmHA financial interest, the State Director will submit the proposal to the Administrator for approval unless the State Director has been delegated approval authority in writing from the Administrator to approve such transactions based upon demonstrated capability and experience in processing such conveyances. Factors to be addressed in formulating such a request include the intended conservation purpose(s) and the environmental importance of the affected property, the impact to the Government's financial



interest, the financial resources of the potential purchaser or grantee and its normal method of acquiring similar property rights, the likely impact to environment should the property interest not be sold or granted and any other relevant factors or concerns prompting the State Director's request.

(v) For FP cases except when FmHA has an affirmative responsibility to place a conservation easement upon a farm property, easements under the authority of this paragraph will not be established unless either the rights of all prior owner(s) have been met or the prior owner(s) consents to the easement. Examples of instances where an affirmative responsibility exists to place an easement on a farm property include wetland and floodplain conservation easements required by § 1955.137 of this subpart or easements designed as environmental mitigation measures and required in the implementation of Subpart G of Part 1940 of this chapter for the purpose of protecting federally designated important environmental resources. These resources include: Listed or proposed endangered or threatened species, listed or proposed critical habitats, designated or proposed wilderness areas, designated or proposed wild or scenic rivers, historic or archaeological sites listed or eligible for listing on the National Register of Historic Places, coastal barriers included in Coastal Barrier Resource Systems, natural landmarks listed on national Registry of Natural Landmarks, and sole source aquifer recharge as designated by the Environmental Protection Agency.

(vi) For FP cases whenever a request is made for an easement under the authority of this paragraph and such request overlaps an area upon which FmHA has an affirmative responsibility to place an easement, that required portion of the easement, either in terms of geographical extent or content, will not be considered to adversely impact the value of the farm property.

(c) *Transfer of farm inventory property for conservation purposes.* (1) In accordance with the provisions of this paragraph, FmHA may transfer, to a Federal or State agency for conservation purposes (as defined in paragraph (a)(3)(i) of this section), inventory property, or an interest therein, meeting of any one of the following three criteria and subject only to farmer program leaseback/buyback and Homestead Protection rights of all previous owners and operators having been met.

(i) A predominance of the land being transferred has marginal value for agricultural production. This is land that SCS has determined to be either highly erodible or generally not used for cultivation, such as soils in classes IV, V, VII or VIII of SCS's Land Capability Classification, or

(ii) A predominance of land being environmentally sensitive. This is land that meets any of the following criteria:

(A) Wetlands, as defined in Executive Order 11990 and USDA Regulation 9500-3.

(B) Riparian zones and floodplains as they pertain to Executive Order 11988.

(C) Coastal barriers and zones as they pertain to the Coastal Barrier Resource Act or Coastal Zone Management Act.

(D) Areas supporting endangered and threatened wildlife and plants (including proposed and candidate species), critical habitat, or potential habitat, for recovery pertaining to the Endangered Species Act.

(E) Fish and wildlife habitats of local, regional, State or Federal importance on lands that provide or have the potential to provide habitat value to species of Federal trust responsibility (e.g., Migratory Bird Treaty Act, Anadromous Fish Conservation Act).

(F) Aquifer recharge areas of local, regional, State or Federal importance.

(G) Areas of high water quality or scenic value.

(H) Areas containing historic or cultural property; or

(iii) A predominance of land with special management importance. This is land that meets the following criteria:

(A) Lands that are inholdings, lie adjacent to, or occur in proximity to, Federally or State-owned lands.

(B) Lands that would contribute to the regulation of ingress or egress of persons or equipment to existing Federally or State-owned conservation lands.

(C) Lands that would provide a necessary buffer to develop if such development would adversely affect the existing Federally or State-owned lands.

(D) Lands that would contribute to boundary identification and control of existing conservation lands.

(2) Whenever a State or Federal agency requests title to suitable or surplus property, the State Director will submit the proposal to the Administrator for approval, unless the State Director has been delegated approval authority in writing from the Administrator to approve such transaction based on demonstrated capability and experience in processing such transfers. The State Director will provide the following information regarding the request:

(i) Certification that the rights of all prior owners and other individuals, as outlined in Subpart S of Part 1951 of this chapter, have expired.

(ii) Determination that the land is suitable or surplus and the rationale for that determination.

(iii) A statement of the factual basis for determining the land to be of marginal value for agricultural production, environmentally sensitive, or having special management importance, with particular discussion of any national benefits to be achieved (e.g., migratory bird and wetland conservation).

(iv) Identification of the requesting agency and the recommended conservation use if a transfer of inventory land were to occur.

(v) Views of the U.S. Fish and Wildlife Service relative to the need for wetland and floodplain deed restrictions as required by § 1955.137(b) of this subpart. These deed restrictions must be in effect at the time of transfer of inventory lands to any non-Federal entity. Transfer to another Federal entity will only be considered where proper wetland and floodplain precautions have been agreed to by the Federal entity.

(3) *Determining priorities for transfer of inventory lands.*

(i) A Federal entity will be selected over a State entity since the transfer of inventory land involves Federally owned/administered land.

(ii) If two Federal agencies request the same land tract, priority will be given to the Federal agency that owns or controls property adjacent to the property in question or if this is not the case, to the Federal agency whose mission or expertise best matches the conservation purpose(s) for which this transfer would be established.

(iii) In selecting between State agencies, priority will be given to the State agency that owns or controls property adjacent to the property in question or if that is not the case, to the State agency whose mission or expertise best matches the conservation purpose(s) for which the transfer would be established.

(4) In cases where land transfer is requested for conservation purposes that would contribute directly to the furtherance of International Treaties or Plans (e.g., Migratory Bird Treaty Act or North American Waterfowl Management Plan), to the recovery of a listed endangered species, or to habitat of national importance (e.g., wetlands as addressed in the Emergency Wetlands Resources Act), priority consideration will be given to land transfer for conservation purposes, without



reimbursement, over other land disposal alternatives.

(5) An individual property may be subdivided into parcels and a parcel(s) can be transferred under the requirements of this paragraph as long as the remaining parcel(s) to be sold make up a viable sales unit, suitable or surplus.

64. Section 1955.140 is revised to read as follows:

**§ 1955.140 Sale in parcels.**

(a) *Individual property subdivided.* An individual property other than Farmer Program may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the County Supervisor, based on the recommendations of the County Committee, will subdivide the property into one or more suitable farm tracts and the suitable tracts will be sold to program applicants in accordance with § 1955.107 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.108 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of property must not change its character from program/suitable to NP or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110 percent of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The County Supervisor, based on the recommendations of the County Committee, for FP cases and the State Director for all other cases may authorize the combining of two or more individual properties into a single parcel for sale as a suitable program property.

**PART 1962—PERSONAL PROPERTY**

65. The authority citation for Part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart A—Servicing and Liquidation of Chattel Security**

66. Section 1962.4 is amended by removing all paragraph designations, adding an introductory paragraph and by revising the definition of "Borrower" and adding in alphabetical order the definitions of "Basic security" and "Normal income security" to read as follows:

**§ 1962.4 Definitions.**

As used in this subpart, the following definitions apply:

*Basic security.* Consists of all equipment serving as security for FmHA loans. It also consists of real estate and all foundation herds and flocks, including replacements, which serve as a basis for the farming operation outlined in the Farm and Home Plan or yearly budget which serve as security for FmHA loans. With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security.

*Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

*Normal income security.* All security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herd or flock, that is the basis of the farming or other operation, and is the basic security for a Farmers Home Administration farmer program loan.

67. Section 1962.6 is amended by revising paragraphs (c)(1)(iv), (c)(2)(ii) and (c)(3)(ii) to read as follows:

**§ 1962.6 Liens and assignments on chattel property.**

(c) \* \* \*

(1) \* \* \*

(iv) For only the amount anticipated for payment as indicated on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable upland cotton, rice, wheat and feed grain programs.

(2) \* \* \*

(ii) Obtain assignments from selected borrowers on Form ASCS-36, "Assignment of Payment," which will be obtained from the ASCS County Office.

(3) \* \* \*

(ii) Checks obtained as a result of an assignment will be made only to FmHA, and the proceeds used as indicated on Form FmHA 1962-1.

68. Section 1962.8 is amended by revising the introductory text to read as follows:

**§ 1962.8 Liens on real estate for additional security.**

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

69. Section 1962.13 is amended by revising the introductory text to read as follows:

**§ 1962.13 Lists of borrowers given to business firms.**

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. County Supervisors should prepare the list of potential purchasers' which are named on the borrower's Form FmHA 1962-1. FmHA will not distribute the Form FmHA 1962-1.



70. Section 1962.17 is amended by revising paragraphs (a)(2), (b)(2) and (b)(5) and adding paragraph (a)(3) to read as follows:

**§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.**

(a) \* \* \*

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1962-1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is a current Form FmHA 1962-1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter, written explanation of the reasons for denial, and an opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time. Immediately upon determining that the borrower does not have a current Form FmHA 1962-1 in the file, the County Supervisor should also begin working with the borrower to develop one.

(3) If the borrower requests a change(s) to Form 1962-1, the County Supervisor will revise the form, initial and date each change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962-1, mark the form revised and notify the borrower, in writing, to confirm that the change(s) have been approved or denied.

(b) \* \* \*

(2) Under all circumstances, sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder and which come to FmHA can be used as follows:

(i) Form FmHA 1962-1 must provide for releases of proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and Commodity Credit Corporation payments so that the borrower can pay essential family living and farm operating expenses.

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses: Household operating; food including lunches; clothing and personal care; health and

medical expenses including medical insurance; house repair and sanitation; school, church, recreation; personal insurance; transportation; furniture; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreements; rent on equipment, land, and buildings; feed for animals; seed; fertilizer; pesticides, herbicides, and spray materials; farm supplies not included above; livestock expenses including medical supplies, artificial insemination and veterinarian bills; machinery hire; fuel and oil; personal property tax; real estate taxes; water charges; property and crop insurance; auto and truck expenses; utilities payments; and payments on contracts or loans secured by farmland, necessary farm equipment, livestock, or other chattels. An item of essential farm machinery which breaks beyond repair may be replaced when it is determined that replacement is a better choice than alternatives such as the lease of a similar piece of machinery or the hiring of the service. The State Director must approve all requests for the replacement of essential farm machinery.

(iii) All of the items listed in paragraph (b)(2)(ii) may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation and what would be an efficient method of production considering the borrower's resources. The County Supervisor will refer to Exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released.

(iv) Proceeds can be applied to the FmHA debt.

(v) Proceeds can be used to purchase property better suited to the borrower's need if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(vii) Property can be exchanged for property which is better suited to the borrower's need if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(viii) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

\* \* \*

(5) If a borrower wants to dispose of chattel security which is not listed on Form FmHA 1962-1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form FmHA 1962-1, the borrower must obtain FmHA's consent before the disposition or before the proceeds are used. FmHA must give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. FmHA must also give consent if the conditions set out on the form and in paragraph (b)(2) of this section are met. The borrower may obtain prior consent by telephoning the county office, by letter, by visiting the county office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor must revise the Form FmHA 1962-1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the county office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the county office. Changes that would result in a major change (examples of major changes are: Feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the county office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form FmHA 1962-1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see § 1924.57(d) of Subpart B of Part 1924 of this chapter.

\* \* \*



71. Section 1962.29 is amended by revising the introductory text of paragraph (b), redesignating paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5) and adding a new paragraph (b)(2) to read as follows:

**§ 1962.29 Payment of fees and insurance premiums.**

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel and crop security from FmHA loan funds when:

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance.

72. Section 1962.34 is amended by revising paragraph (a)(2) to read as follows:

**§ 1962.34 Transfer of chattel security and EO property and assumption of debts.**

(a) \*\*\*  
(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965-13, "Assumption Agreement (Farmer Programs Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved.

73. Section 1962.40 is amended by revising the introductory text of paragraphs of (b) and (e)(1), revising

paragraph (b)(3) and adding paragraph (f) to read as follows:

**§ 1962.40 Liquidation.**

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In former program loans cases, borrowers must receive Exhibit A and Attachments 1, 2 and any additional notice(s) required by Subpart S of Part 1951 of this chapter and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(3) *Agreement with borrower.* If the borrower does not request a hearing, fails to return the Attachment 2 of Exhibit A required by Subpart S of Part 1951 of this chapter within 45 days, the County Supervisor should send Attachments 9 and 10 of Exhibit A of Subpart S of Part 1951 of this chapter. After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account, the County Supervisor may allow the borrower 60 days to accomplish such action by:

(i) Selling the security in accordance with § 1962.41 of this subpart;

(ii) Transferring the security in accordance with § 1962.34 of this subpart;

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter; or

(iv) Refinancing the debt with another lender.

(e) \*\*\*

(1) After Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

(f) When a borrower's security property is liquidated voluntarily or

involuntarily and there is an unpaid balance on the account, the County Supervisor will meet with the borrower within 30 days to assist the borrower in developing a debt settlement offer in accordance with Subpart B of Part 1956 of this chapter.

74. Section 1962.41 is amended by revising the introductory paragraph and revising paragraph (e) and adding a new paragraph (f) to read as follows:

**§ 1962.41 Sale of chattel security or EO property by borrowers.**

Borrowers who are liquidating voluntarily and who have not been sent Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter will be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter before any sale occurs.

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the County Supervisor will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan account(s). If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the Committee, and be further processed and approved in accordance with § 1962.34(h) of this subpart:

In our opinion (*name of Borrower and any co-signer*) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form FmHA 1965-8, "Release From Personal Liability" will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter



(available in any FmHA office). The account will then be considered for debt settlement.

75. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c) (5)(i), and revising paragraphs (c)(5)(ii), (c)(6)(ii)(A) and (d) to read as follows:

**§ 1962.42 Repossession, care, and sale of chattel security on EO property by the County Supervisor.**

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security, a borrower and all cosigners on the note must receive Exhibit A and Attachment 1, 2, and any other additional notices required by of Subpart S of Part 1951 of this Chapter and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

(c) \*\*\*

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 1955-41, "Notice of Sale," may be used for public or private sales.

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 1955-41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service

before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) \*\*\*

(ii) \*\*\*

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 1955-41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

(d) *Risk of injury.* If a farmer program loan borrower has abandoned security and the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Exhibit A and Attachments 1 and 2 of Subpart S of Part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third-party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40 (e) of this subpart.

76. Section 1962.47 is amended by revising paragraphs (a)(3), (c)(3) and (c)(4)(i) to read as follows:

**§ 1962.47 Bankruptcy and insolvency.**

(a) \*\*\*

(3) The County Supervisor will send Attachments 1 and 2 of Exhibit A (and not Exhibit A) of Subpart S of Part 1951 of this chapter together with Exhibit D of this subpart, "Notice to Borrower's Attorney Regarding Loan Servicing Options," (available in any FmHA office) to the attorney of a farmer

program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. A dated copy of Exhibit D of this subpart will be sent to OGC and the U.S. Attorney's office at the same time. Exhibit D of this subpart explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly.

(i) Exhibit D of this subpart also explains that borrowers who have filed Chapter 11, 12, and 13 bankruptcies must request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief or dismiss their bankruptcies. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. The stay should be modified for this purpose or the Chapter 11, 12, or 13 be dismissed; however, negotiation between a borrower and FmHA is permitted so long as the borrower supplies FmHA with a filed copy of the motion for relief from stay in those jurisdictions where OGC has advised FmHA that it is the customary practice of the local bankruptcy court not to sign an order granting limited relief from stay. If the bankruptcy court will sign these orders they should continue to be required prior to permitting the borrower to apply for servicing. If modification of the automatic stay is not requested, or the automatic stay is not modified for the limited purpose set out above or if the bankruptcy case is not dismissed, but the borrower instead files a plan of reorganization which restructures the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of FmHA's recommendation for voting on the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations.

(ii) Borrowers who have filed Chapter 7 bankruptcies also must either dismiss their bankruptcies or request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief. Then the borrower must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter before FmHA will consider or grant any request for servicing. Until the automatic stay is modified for the limited purpose set out above, or the borrower supplies FmHA with a filed copy of a motion for



relief from stay in those jurisdictions where OGC advises that the customary practice of the local bankruptcy court is not to sign an order providing limited relief from stay, or the Chapter 7 is dismissed, FmHA will not discuss the options with the borrower or the borrower's attorney. Exhibit D of this subpart explains that FmHA will not continue with a debtor who does not reaffirm the FmHA debt. If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation.

(c) \*\*\*

(3) In Chapter 11, 12 or 13 cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed, it will be accomplished after sending the attorney of the borrower Exhibit D of this subpart and Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any additional attachments required by Subpart S of Part 1951 of this chapter, unless the attorney was previously notified by the attachments of the specific default or delinquency.

(4) \*\*\*

(i) Loans can be liquidated if a discharge hearing has been held and if the borrower has not reaffirmed the debt and if the property is no longer part of the estate. Liquidation can proceed prior to the discharge hearing if the borrower and the trustee agree or consent to the entry of an abandonment order and the lifting of the stay. Exhibit D of this subpart and Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter and any additional attachments required by Subpart S of Part 1951 of this chapter, unless the attorney was previously notified by these attachments of the specific default or delinquency. The borrower will be sent an acceleration notice (Exhibit E to Subpart A of Part 1955 of this chapter) and there will be no appeal of the acceleration. Then the account will be liquidated.

77. Section 1962.49 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

**§ 1962.49 Civil and criminal cases.**

(c) \*\*\*

(1) *County Office actions.* Forms FmHA 455-1, "Request for Legal Action," and FmHA 455-22 will be prepared. Form FmHA 455-2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455-1 and FmHA 455-22 and, where applicable,

FmHA 455-2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455-1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455-1 and FmHA 455-22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in the case. If Attachments 1, 2 and other appropriate attachments to Exhibit A of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded.

78. Exhibit B of Subpart A is revised to read as follows: (Note: This revision was inadvertently not published in the Federal Register and the CFR when the revision was executed in 1980.)

**Exhibit B—Memorandum of Understanding and Blanket Commodity Lien Waiver**

The Farmers Home Administration (FmHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA and CCC in and without undue inconvenience to producers and FmHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA will try to furnish a complete and current list of the names of such producers; however, FmHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA and the producer if (a) his name is on the list furnished by FmHA, or (b) he names FmHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Dated: July 20, 1980.

Ray V. Fitzgerald

Executive Vice President, CCC

Dated: July 14, 1980.

Gordon Cavanaugh.

Administrator, FmHA

79. Exhibit D to Subpart A is revised to read as follows:

**Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options**

Procedure Reference: FmHA Instruction 1962-A

Purpose: Used by a County Supervisor to send with Attachments 1 and 2 of Exhibit A (not Exhibit A) of Subpart S of Part 1951 of this chapter to the borrower's attorney when the borrower has filed bankruptcy. A dated copy of this letter will be sent to the United States Attorney's Office and OGC when it is mailed to the borrower's attorney.

**RETURN ADDRESS**

Borrower's Attorney Address

Dear

We were recently notified that your client (name of borrower) has filed bankruptcy. The enclosed forms explain some of the loan servicing options that FmHA has available. We would appreciate your informing your client of these options. In order to ascertain whether your client is eligible for these options it is necessary for FmHA's employees to work closely with your client. We are concerned about whether such contact will be in violation of the automatic stay.

\*[If your client has filed under Chapter 7 and wants to apply for servicing relief from FmHA, the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. If your local jurisdiction does not sign orders providing limited relief from the automatic stay, please provide FmHA with a filed copy of your motion seeking limited relief from the automatic stay. A sample motion and order are available from the U.S. Attorney's office. After dismissal or modification of the automatic stay or attempted modification, your client must complete and return Attachment 2 to Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing.



So long as the Chapter 7 is pending FmHA will not discuss any of the servicing options with you or your client unless the automatic stay is modified or you seek a modification and it is not customary for your local jurisdiction to approve such orders. Also, in order for FmHA to continue with your client after a discharge, your client must reaffirm the FmHA debt.]

\*[If your client has filed under Chapter 11, 12 or 13 and wants to apply for servicing relief from FmHA the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. If your local jurisdiction does not sign orders providing for limited relief from the automatic stay, please provide FmHA with a filed copy of your motion seeking limited relief from the automatic stay. A sample motion and order are available from the U.S. Attorney's office. After dismissal, modification of the automatic stay, or attempted modification, your client must complete and return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. Unless the automatic stay is modified for this purpose or you seek such modification and it is not customary for your local jurisdiction to approve such orders, or the case is dismissed, FmHA will not discuss any of the servicing options with you or your client. You may, of course, choose to file a proposed plan which may or may not contain debt restructuring features similar to those available from FmHA.]

If you intend to file a motion to allow your client to request and be granted servicing relief, we ask that you do so within 45 days. If no motion is filed within that time, we will assume that your client does not intend to make a request for servicing and we will proceed to protect our interests as allowed by the Bankruptcy Code.

FmHA's farmer programs debt servicing regulation is found at 7 CFR, Part 1951, Subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor

\*Choose applicable paragraph.

80. Exhibit E to Subpart A is added to read as follows:

#### **Exhibit E—Releasing Security Proceeds and Determining "Essential" Family Living and Farm Operating Expenses**

##### *Family Living Expenses*

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA should release to pay for particular items within these broad categories. For example, FmHA has to release for transportation expenses, but should FmHA release so that a borrower can buy a new car? If, at planning time, it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA 1962-1 can be completed to show that FmHA plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA 1962-1 to release for a used car or for gas and repairs to the borrower's present car. If it is necessary for FmHA to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for that broad purpose. However, nothing requires us to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

##### *Farm Operating Expenses*

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA should release for operating expenses and over whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for

essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

FmHA Instruction 1962-17 of FmHA Instruction 1962-A states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses but when this is not possible, FmHA and the borrower must work together to decide which farm operating expense demand immediate attention and cannot be neglected and those are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

81. Exhibit F to Subpart A is added to read as follows:

BILLING CODE 3410-07-M



## Exhibit F—Form FmHA 1962-1

USDA-FmHA  
Form FmHA 1962-1  
(Rev. 8-88)

Position 1

AGREEMENT FOR THE USE OF PROCEEDS/RELEASE  
OF CHATTEL SECURITY

FORM APPROVED  
OMB No. 0575-0111  
Exhibit F

Name \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Date of  
Security Instrument \_\_\_\_\_Period covered  
by Agreement \_\_\_\_\_ to \_\_\_\_\_Property  
Description \_\_\_\_\_

## PLANNED

Disposition			Ex- pected Amt. of Pro- ceeds	Use of Proceeds	Disposition			Amt. of Pro- ceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Mo.			Quan.	How	Date			

Property  
Description \_\_\_\_\_

## PLANNED

Disposition			Ex- pected Amt. of Pro- ceeds	Use of Proceeds	Disposition			Amt. of Pro- ceeds	Use of Proceeds	Appr'd Yes/No (initial)
Quan.	How	Mo.			Quan.	How	Date			

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.



Property Description

[illegible]

Property Description

[illegible]

Property Description

[illegible]



## Position 1

## AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY

In this Agreement the Farmers Home Administration (FmHA) is referred to as *you* and *your*.

and \_\_\_\_\_, the borrower(s), is referred to as *I*, *me*, and *my*. My contact with you will be through the County Supervisor.

In exchange for loans received from the FmHA, I signed Security Agreements with the United States of America. By signing the Security Agreements, I have given you a security interest in all the property described in the Security Agreements. This property has been listed on this form. This property is called collateral.

**Do I Have Written Consent to Sell?**

I understand that I must obtain written consent from you before I can sell, exchange, feed to livestock, consume, or in any way dispose of collateral. This Agreement explains how the money or property received from the sale, exchange, or other disposition of collateral may be used. So long as I meet the terms of this Agreement, this Agreement acts as your written consent to dispose of collateral listed on this Agreement. I understand that this Agreement is not intended to restrict my ability to operate my farm or ranch efficiently. It is intended to describe how I will dispose of collateral and to record the sales, exchanges, or other dispositions of collateral.

**What Collateral Will Be Sold?**

I have listed on this form all collateral that I expect to sell, exchange, feed to livestock, consume, or otherwise dispose of between \_\_\_\_\_ and \_\_\_\_\_. I understand that you do not expect me to list each animal, bushel, bale, or pound of property I plan to dispose of, but that you do expect me to list an approximate number.

**What is the Projected Date and Price of Sale?**

I have listed the approximate date on which I will dispose of collateral. I understand this can be listed by month, quarter, or whatever period best suits my operation. I have also listed the price I expect to receive, and a description of how I plan to use the proceeds. I agree that I will dispose of collateral for its fair market value.

**How Do I Project Dates and Prices?**

I understand that all dates and figures listed on this form are projections only. You also acknowledge this as part of the Agreement. The figures reflect the crop yields, livestock production numbers, operating expenses, income, and marketing practices that I can reasonably expect, based on my farm records and experience.

The figures are based on my past income, expense, and production levels. You do not require a strict averaging of my past income, expense, and production levels when calculating these projections, and may permit adjustment of those averages to reflect unusually low or high yields, income or expenses that I have had in the past due to circumstances beyond my control. In reaching these figures, you will consider planned changes in my operation.

I understand that the dates and figures used on this form must be consistent with any current Farm and Home Plan or other plan of operation to which you and I have agreed.

**When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses?**

You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial, or indispensable.

You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan(s).

You also agree to allow me to use livestock for food for my family.

**What Happens if Someone Else Has a Security Interest in the Collateral I Sell?**

I understand that the money from the sale of collateral must always be used to pay anyone who has a security interest that comes before FmHA's security interest.

**What Changes Require Your Prior Approval?**

I understand that if I want to sell, exchange, or dispose of collateral that is not listed on this form, I must obtain permission from you before I dispose of the collateral.

If I want to dispose of collateral in a way not listed in the "How" section of this form, I must obtain permission from you before disposing of the collateral. For example, if I have listed that all crops will be sold and later decide that some crop is needed for feed, I must obtain permission from you before feeding the crop to the livestock. You must grant permission if this action is necessary to meet essential family living or farm operating needs and if the livestock and livestock products are collateral for the FmHA loan(s).

If I want to use proceeds in a way not shown on the "Use of Proceeds" section of this form, I must obtain permission from you before the proceeds are used. For example, if I listed that the proceeds from the sale of the crop would be used to pay on FmHA debt and later find that the money is needed to pay another farm operating expense, I must obtain your permission before that expense is paid. You must grant permission and change the form if the proceeds will be used for essential living or operating expenses.



**What Changes Do Not Require Your Prior Approval?**

I am not required to obtain your permission before I sell, exchange, or dispose of collateral even if the sale will require a change in the "Quantity", "Month", or "Expected Amount of Proceeds" sections on this form. However, if the sale does result in changes to the "Quantity" section of this Agreement due to higher or lower than expected crop yields or livestock production numbers, I must promptly report this to the County Supervisor. I must also promptly report to the County Supervisor any sale that results in a change to the "Month" or "Expected Amount of Proceeds" section of this form. The County Supervisor will then change this form accordingly.

**How Do I Request and Report Changes and How are Changes Made?**

I may request and report changes on the form by telephone, letter, or visit to the county FmHA office. A trip to the county FmHA office is not always necessary. I understand that when an agreement is reached on a requested change or when I report changes, the County Supervisor must revise the form, initial and date the change, and mark the form "revised". I will also initial the change.

My initials may be obtained by either (1) mailing a copy to me, or (2) asking me to initial the revised form during my next visit to the FmHA office.

If my requested or reported changes would result in a major change in my operation, the County Supervisor may request that I attend a conference. At that conference, the County Supervisor and I will develop a new Farm and Home Plan and revise this form.

**What if You and I Do Not Agree?**

If you and I disagree on how to complete or make changes on this form, you must send me a letter which describes the items on which we do not agree. The letter must explain why we do not agree. The letter must also tell me how I may appeal your decision.

Until the appeal is decided, you must release proceeds from the sale of collateral if I need those proceeds to meet essential family living and farm operating expenses. You must also release any other proceeds on which you and I have agreed.

When my appeal is decided, the County Supervisor will ask me to sign a new Farm and Home Plan and Form FmHA 1962-1, which reflects the decision on the appeal.

If I do not sign the new agreement, the County Supervisor will give me a copy of the forms and tell me that the Government considers this Agreement to be binding. If I violate this Agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

**What Happens if I Do Not Cooperate?**

I understand that if I do not appeal or if I refuse to cooperate in completing this Agreement, the County Supervisor will complete the form, sign it, and send it to me. The County Supervisor must send a letter with the completed form explaining that the Government will consider the form to be binding on me. I understand that if I violate the new agreement, the Government will take the actions described below in the section entitled "What Happens if I Violate This Agreement?".

**Who Are the Potential Purchasers of My Farm Products?**

This is a list of purchasers who often buy farm products from me. I have included grain elevators, auction barns, and others who I expect might buy from me.

Farm ProductPotential PurchasersBusiness Address

I understand that you realize that I do not always know in advance who will buy my product. If I cannot identify specific, potential purchasers, I have described below how the farm products will be sold. For example, if I sell farm products at a roadside stand, by advertising in the newspaper or to neighbors, the exact method of sale is described below.

Description and Method for Sale**Can I Sell to Purchasers Not Listed on this Form?**

I understand that I may sell collateral to purchasers other than those listed on this form. If I do this, then I must immediately notify the County Supervisor of what has been sold and the name and business address of the purchaser. I do not need your prior approval.



**Does FmHA's Name Have to be on the Check I Receive?**

Both FmHA and my name must be listed on all checks, drafts, or money orders which I receive for the sale of collateral listed on this form unless all FmHA installments for the period of this Agreement have been paid; this includes all past-due installments. Checks made in accordance with an assignment agreement do not have to include both names.

**What Records Must I Keep?**

I must keep records of how I actually dispose of collateral and how I use the proceeds. I must provide these records to the County Supervisor on request and at the end of the period covered by this Agreement.

**Has FmHA Released its Security Interest?**

You consent to all sales, exchanges, and other dispositions of collateral listed on this form, so long as I meet the terms of this Agreement. You agree to release your security interest as agreed above. You will provide a formal, written release on Form FmHA 462-12, "Statement of Continuation, Partial Release, Assignment, Etc.", or Form FmHA 460-1, "Partial Release", or other appropriate forms approved by your attorneys when I request it.

**What Happens if I Violate This Agreement?**

If I sell, exchange, or dispose of collateral and use the money in a way not listed in this Agreement without your permission, the Government's security interest in the collateral is not released. You will ask me to pay FmHA an amount equal to the value I received for the collateral involved. I understand that if I do not pay as requested by FmHA or do not provide enough information to allow the County Supervisor to approve the sale and use of proceeds, I have violated this loan agreement. I realize that you may request the purchaser of the collateral to pay FmHA or start legal procedures to sell all of my other collateral. I also understand that during the time covered by this Agreement, the County Supervisor can only approve one sale or use of proceeds which was made in violation of this Agreement.

I understand that if I do not pay as requested, FmHA may also refer the case for possible criminal action against me.

**Who Can See This Agreement?**

Unless you are required to do so by law or court order, you will not release this Agreement or information taken from it outside the United States Government to anyone other than me or my representative.

**What Happens if My FmHA Loan Accounts are Accelerated?**

I understand that your current regulations say that if I receive an Acceleration Notice from you, this Agreement automatically ends and that you will not afterwards release any proceeds from the disposition of collateral. However, by signing this form, I do not give up the right to challenge your regulations in court and may claim in court that I am entitled to the release of proceeds after acceleration.

This signature is to acknowledge that I(we) understand this Agreement and will keep to it.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Borrower)

Date: \_\_\_\_\_

\_\_\_\_\_  
(County Supervisor)



**PART 1965—REAL PROPERTY**

82. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases**

83. Section 1965.7 is amended by redesignating paragraphs (a) through (k) as (b) through (l), adding a new paragraph (a) and an introductory paragraph to read as follows:

**§ 1965.7 Definitions.**

As used in this subpart, the following definitions apply:

(a) *Borrower*. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership, or joint operation is the borrower.

84. Section 1965.11 is amended by revising the introductory texts of paragraphs (b), and (c)(1)(ii), by revising paragraphs (c)(1)(i), (c)(2)(ii) and (c)(3) and removing paragraph (c)(2)(i)(C) to read as follows:

**§ 1965.11 Preservation of security and protection of liens.**

(b) *Action by FmHA for account of borrower*. When necessary to protect the interest of the Government, actions will be taken by FmHA for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher in accordance with FmHA Instruction 2075-A (available in any FmHA office), and forwarded to the Finance Office for issuance of the Treasury Check and charged to the borrower's account. Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the State Director.

(c) \*\*\*

(1) \*\*\*

(i) *County Supervisor's responsibility*. When the County Supervisor learns of a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the

borrower Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. Then the County Supervisor will send the County Office case file, complete with information concerning the action, and recommendations for FmHA servicing action to the State Director. The information sent to the State Director will include a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility*. The State Director will consult OGC about all lawsuits involving the property. The State Director will also consult OGC about any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. Protective advances will only be authorized to protect the Government's interest. Protective advances will not be authorized for protection of the borrower's interest or the interest of any third party. When foreclosure or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or approving a subordination to permit another lender to make a loan, provided (protective advances will not be used in lieu of subsequent loans or subordinations unless authorized by the Assistant Administrator for Farmer Programs):

(2) \*\*\*

(ii) *Decision not to pay off the prior lien*. If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower along with Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter and blank Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Then one of the following actions will be taken:

(A) *Making a bid*. Bidding will be completed in accordance with § 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid, actions will be taken in accordance with

§§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid*. When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with § 1955.18 (f) of Subpart A of Part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA mortgage*. When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Attachments 1, 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

85. Section 1965.12 is amended by revising paragraphs (a)(8), (b)(2)(ii)(B) and (g) to read as follows:

**§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.**

(a) \*\*\*

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the present market value of the real estate security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total real estate security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

(b) \*\*\*

(2) \*\*\*

(ii) \*\*\*



(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized. If the farm tract secures only type(s) of FmHA loan(s) not currently authorized, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12 (a)(7) of this subpart.

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet installments when due. Reamortization of farmer program loans will be processed in accordance with Subpart S of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34 (f) of this subpart if an NP loan is involved.

86. Section 1965.13 is amended by revising the introductory paragraph and revising paragraph (f)(4)(ii) to read as follows:

§ 1965.13 **Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.**

If an NP loan is involved, see § 1965.34 of this subpart or see Subpart S of Part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However, there is no authority for FmHA employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

(f) \* \* \*

(4) \* \* \*

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with Subpart A of Part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with § 1924.57(b) of Subpart B of Part 1924 of this chapter.

87. Section 1965.17 is amended by revising paragraph (a) to read as follows:

§ 1965.17 **Lease of security.**

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with § 1965.26(d) of this subpart.

88. Section 1965.25 is amended by revising the introductory texts of paragraphs (a) and (d) to read as follows:

§ 1965.25 **Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.**

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purpose of this paragraph, real estate securing any

loan made for real estate purposes is not considered "additional security" unless it is a tract of land that is in addition to the farm real estate. Additional security for a SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and:

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a junior lien on the borrower's dwelling financed with a SFH loan and located on a nonfarm tract when the junior lien was taken as additional security for a farmer program loan(s), provided the SFH security has been liquidated and there would be no proceeds in excess of the SFH debt to apply to the farmer program loan(s). This authority does not extend to valueless judgement liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

89. Section 1965.26 is amended by revising paragraphs (a)(2), (b)(1), (c), (d) and (f)(6), revising the introductory texts of paragraphs (b), (e) and (f), adding paragraph (g) and removing paragraph (b)(4) to read as follows:

§ 1965.26 **Liquidation action.**

(a) \* \* \*

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file. If a qualified FmHA appraiser is not available, the State Director may contract for an appraisal in accordance with FmHA Instruction 2024.A (available in any FmHA office).

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be



accomplished as expeditiously as possible. In farmer program cases borrowers must receive Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* If the borrower fails to return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter within 45 days, or indicates on the attachments that servicing is not requested, the County Supervisor should send Attachments 5 and 6 of Exhibit A of Subpart S of Part 1951 of this chapter.

\* \* \* \* \*

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan, and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the time the borrower is sent Exhibit A with Attachments 1 and 2 of Subpart S of Part 1951 of this chapter, except as provided in paragraph (c)(2) of this section.

(2) SFH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless it is subject to liquidation based on the provisions of § 1965.125 of Subpart C of this part, taking into full consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be given to continuing with the SFH loan after the other

security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) The borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to Exhibit D of this subpart (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the provisions of Exhibit B (available in any FmHA Office) of Subpart S of Part 1951 of this Chapter when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled, as appropriate. An equity receivable account will be established by the

Finance Office in the amount of the Equity Recapture Agreement, and the county office will remit collection under the Agreement, in the same manner as a SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form FmHA 451-2, Schedule of Remittance":  
EQUITY RECEIVABLE PAYMENT.

(v) In some States FmHA is prohibited by State law from foreclosing the SFH loan when the nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled unless the conditions set forth in paragraph (c)(2) (i), (iii), and (iv) of this section are complied with.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of time, not



to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of § 1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with § 1965.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with § 1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

(f) *Cash sales.* This paragraph applies to a sale of all real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The County Supervisor will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with Subpart B of Part 1956 of this chapter.

(g) *Account balances.* When security property is sold for an amount not less than the market value or an assumption of an amount equal to the market value is approved, the account balance will be handled as follows:

(1) When the seller or transferor (and cosigner, if any) is not released from liability, the account balance after the assumption is processed, or cash proceeds are applied, will be settled according to Subpart B of Part 1956 of this chapter or reclassified to collection only.

(2) When the transferor will be released of liability Form FmHA 1965-8 "Release from Personal Liability" will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(3) In the case of a sale outside the program for less than debt, Form FmHA 1965-8 will be given to the borrower and otherwise distributed in accordance with The Forms Manual Insert.

90. Section 1965.27 is amended by removing paragraph (b)(4)(v) and redesignating paragraph (b)(4)(vi) as (b)(4)(v), revising the introductory text of the section and the introductory texts of paragraphs (b) and (b)(5), and revising paragraphs (b)(1), (b)(3), (b)(4)(iv), (b)(5)(iv), (c)(1)(iii), (g)(8) and (g)(9) to read as follows:

#### § 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access development or other rights is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27 (g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or

State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965-13, "Assumption Agreement for Farmer Program Loans," Form FmHA 460-9, "Assumption Agreement (Same Terms—Eligible Transferee)," or Form FmHA 1965-15, "Assumption Agreement (Single Family Housing Loans)," for SFH Loans.

(1) *Agreement.* Form FmHA 465-5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received Attachment 1 of Exhibit A of Subpart S of Part 1951 of this chapter.

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under § 1965.26 (a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965-13 and the accrued interest will be computed from Form FmHA 451-26, "Transaction Record," or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest



owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under Subpart S of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) \* \* \*

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursing at closing of the transfer.

\* \* \* \* \*

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Form FmHA 460-9, will be executed by the assuming parties. The name, case number, and address, as applicable, will be changed to that of the transferees on the Finance Office records. In each of the following situations, Forms FmHA 465-5 and 460-9 must be prepared and distributed in accordance with the applicable FMI.

\* \* \* \* \*

(iv) As immediate family member of an individual borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing

borrower. Also, an entity which is made up of only the individual borrower and the borrower's immediate family members may assume on the same terms the entire amount of a loan received by the individual borrower. Title to the real estate security would have to be transferred to the entity.

(c) \* \* \*

(1) \* \* \*

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) On eligible rates and terms by an immediate family member of an individual borrower; an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative; an entity which is made up of only immediate family members of an individual borrower; or an entity which is made up of only immediate family members of any partner(s), joint operator(s), stockholder(s) or member(s).

(B) On eligible rates and terms by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

\* \* \* \* \*

(g) \* \* \*

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfer(s) will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when

the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965-13; 1965-22; 460-9 (as applicable); 1965-23; 451-1, "Acknowledgment of Cash Payment"; and 1965-8, will be prepared and distributed according to the FMI.

\* \* \* \* \*

91. Section 1965.31 is amended by revising paragraph (a)(2) to read as follows:

**§ 1965.31 Taking liens on real estate as additional security in servicing FmHA loans.**

\* \* \* \* \*

(a) \* \* \*

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

\* \* \* \* \*

92. Exhibits A through D are added to Part 1965, Subpart A as follows:

#### Exhibits to Subpart A

**Note:** The exhibits referenced in this Subpart are available in any FmHA office. Exhibit A—Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration.

Exhibit B—Notification of Prior Lienholders Intent to Foreclosure.

Exhibit C—Processing Guide.

Exhibit D—Equity Recapture Agreement. Date: August 22, 1988.

Laverne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 88-20740 Filed 9-12-88; 8:45 am]

BILLING CODE 3410-07-M



# Reader Aids

Federal Register

Vol. 53, No. 178

## INFORMATION AND ASSISTANCE

### Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

### Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

### Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

### Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

### The United States Government Manual

General information	523-5230
---------------------	----------

### Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

## FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

33801-34012	1
34013-34272	2
34273-34478	6
34479-34710	7
34711-35060	8
35061-35190	9
35191-35282	12
35283-35422	13
35423-35798	14

## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

<b>Proclamations:</b>	
5851	35061
5852	35063
5853	35065
5854	35191
5855	35193
5856	35195
5857	35283
5858	35423

### Executive Orders:

12650	35285
12651	35287

### Administrative Orders:

<b>Memorandums:</b>	
Aug. 17, 1988	34711
<b>Presidential Determinations:</b>	
No. 88-20 of July 26,	
1988	33801
No. 88-22 of Sept. 8,	
1988	35289

### 5 CFR

300	34273
302	35291
333	35291
531	34273
831	35294

### Proposed Rules:

581	34305
890	34305

### 7 CFR

1	35296
246	35296
252	34013
301	34014, 35425
354	34021, 35426
401	34022
907	34022, 34026
908	34022, 34026
910	35197
920	33801, 34033
931	34479
932	34479
981	34035
982	34480
989	34713
999	34713
1421	33803
1809	35638
1902	35638
1910	35638
1924	35638
1941	35638
1943	35638
1944	35067, 35638
1945	35638
1951	38904, 35638
1955	35638
1962	35638

1965	35638
3404	34481

### Proposed Rules:

210	35083
225	34761
226	34761
401	34762
910	34107
945	34764
987	34108
1006	34766
1012	34766
1013	34766
1124	33823

### 9 CFR

78	34035
92	34037
97	35068

### Proposed Rules:

317	35089
-----	-------

### 10 CFR

0	35301
---	-------

### 12 CFR

611	35303
614	35427
615	35427
617	35303
618	35303, 35427
622	35306
623	35306
790	34481
791	34481

### Proposed Rules:

8	34307
563c	35319
571	35319
615	34109

### 13 CFR

108	35458
115	34872
120	35459
122	35459

### 14 CFR

1	34198
13	34646, 35255
21	34274
23	34194
25	34274
27	34198
29	34198
33	34198
39	34038, 34040, 35306, 35307
71	34041, 34042, 34276, 34277, 35308, 35309
73	34277
97	34039, 35310



99.....34043	813.....34372	117.....34076	70.....34296, 34532
<b>Proposed Rules:</b>	882.....34372	<b>Proposed Rules:</b>	71.....34532
39.....34116, 34117, 35319-35322	887.....34372	117.....34129, 34130, 35094	90.....34296, 34532
71.....35323, 35324	888.....34372	160.....35095	91.....34532, 34872
129.....34874	960.....34372		93.....34532
	964.....34676	<b>34 CFR</b>	98.....34532
<b>15 CFR</b>	<b>Proposed Rules:</b>	367.....35071	107.....34532
379.....35459	111.....34668	400.....35258	110.....34532
399.....35459, 35466		401.....35258	147.....34296
	<b>26 CFR</b>		150.....34532
<b>16 CFR</b>	1.....34045, 34194, 34284, 34488, 34716, 34729, 35467	<b>36 CFR</b>	151.....34532
<b>Proposed Rules:</b>	31.....34734	1190.....35507	153.....34532
13.....34307, 34776	501.....35467	<b>Proposed Rules:</b>	154.....34532
	504.....35467	261.....35526	154a.....34532
<b>17 CFR</b>	505.....35467	1228.....34131	159.....34532
146.....35197	506.....35467		160.....34532
211.....34715	507.....35467	<b>38 CFR</b>	161.....34532
	511.....35467	21.....34494, 34739	162.....34532
<b>18 CFR</b>	512.....35467	36.....34294	164.....34532
154.....35312	518.....35467		167.....34296
157.....35312	519.....35467	<b>39 CFR</b>	169.....34296
161.....34277	602.....34045, 34194, 34488, 34729, 34734, 35467	111.....35314	170.....34532
250.....34277	<b>Proposed Rules:</b>		171.....34532
260.....35312	1.....34120, 34194, 34545, 34778, 34779, 35204, 35525	<b>40 CFR</b>	172.....34532
284.....34277, 35312	154.....34194	52.....33808, 34077, 34500	188.....34296, 34532
385.....35312	501.....35525	81.....34507, 35071	189.....34532
388.....35312	504.....35525	167.....35056	401.....34532
<b>Proposed Rules:</b>	505.....35525	180.....33897, 34508-34512	550.....34298
4.....34119	506.....35525	186.....34513	
16.....34119	507.....35525	260.....34077	<b>47 CFR</b>
101.....34545	511.....35525	261.....35412	1.....34538
	512.....35525	264.....33938, 34077	73.....34299, 34300, 34538-34542, 00
<b>20 CFR</b>	518.....35525	265.....33938, 34077	<b>Proposed Rules:</b>
901.....34481	519.....35525	270.....34077	1.....34558
<b>Proposed Rules:</b>	602.....34120	271.....34758, 34759	69.....33826
204.....35515		300.....33811	73.....34559, 34560, 35336-35338
404.....35516	<b>27 CFR</b>	302.....35412	90.....35339
416.....35516	<b>Proposed Rules:</b>	761.....33897	97.....35341
603.....34120	55.....35330	795.....34514	
	71.....35093	799.....34514	<b>48 CFR</b>
<b>21 CFR</b>		<b>Proposed Rules:</b>	Ch. 12.....34301
12.....34871	<b>28 CFR</b>	52.....33824, 33826, 34132, 34310-34318, 34550, 34780-34788, 35204, 35207, 35527, 35528	Ch. 63.....34104
74.....35255	<b>Proposed Rules:</b>	60.....34551	1.....34224
81.....35255	2.....34546	62.....34549	3.....34224
82.....35255		81.....34318, 34557, 34791	7.....34224
175.....34278	<b>29 CFR</b>	180.....34792, 34794	9.....34224
176.....34043	502.....35154		10.....34224
558.....35312	1910.....34736, 35610	<b>41 CFR</b>	19.....34224
808.....35313	1926.....35610	101-40.....35410	29.....34224
886.....35602	<b>Proposed Rules:</b>		31.....34224
<b>Proposed Rules:</b>	103.....33934	<b>44 CFR</b>	36.....34224
205.....35325	1910.....33823, 33807, 34708, 34780	64.....34087	47.....34224
	1915.....33823, 34780	67.....34089	52.....34224
<b>22 CFR</b>	1918.....33823, 34780		204.....34090
204.....33805	1952.....34121	<b>45 CFR</b>	207.....35201
		233.....45198	210.....35201
<b>23 CFR</b>	<b>30 CFR</b>		215.....35201
<b>Proposed Rules:</b>	208.....34737	<b>46 CFR</b>	232.....35511
770.....35178	250.....34493	1.....34532	252.....34090, 35201, 35511
	816.....34636	2.....34532	519.....33812
<b>24 CFR</b>	817.....34636	4.....34532	542.....34089
8.....34634	<b>Proposed Rules:</b>	6.....34532	<b>Proposed Rules:</b>
200.....34279	925.....34128	30.....34296, 34532	Ch. 16.....34320
203.....34279		31.....34532, 34872	548.....34871
204.....34279	<b>32 CFR</b>	32.....34532	552.....34871
213.....34279	199.....33808, 34285	35.....34532	927.....35281
220.....34279	<b>Proposed Rules:</b>	42.....34532	
221.....34279	230.....35331	46.....34532	<b>49 CFR</b>
222.....34279	231.....35331	50.....34296, 34532	544.....35073
234.....34279	231a.....35331	67.....34532	571.....33698, 35075
235.....34279		69.....34296, 34532	1342.....33813
240.....34279	<b>33 CFR</b>		<b>Proposed Rules:</b>
511.....34372	100.....35069, 35070		Ch. VI.....35341
570.....34416			571.....35097



623.....	35178
641.....	34560
644.....	34560

**50 CFR**

17.....	33990, 34696- 34701, 35076
23.....	33815
32.....	34301
33.....	34301
227.....	33820
259.....	35202
661.....	34543, 34760, 35316 35513
674.....	34303, 35080, 35317
675.....	35081

**Proposed Rules:**

13.....	34795
14.....	34795
17.....	34560, 35210, 35215
23.....	35530
611.....	34322
651.....	35532
672.....	33897, 34322
675.....	34322

**S. 2641/Pub. L. 100-428**

Temporary Emergency Wildfire  
Suppression Act. (Sept. 9,  
1988; 102 Stat. 1615; 2  
pages) Price: \$1.00

**S.J. Res. 374/Pub. L. 100-429**

To provide for a settlement of  
the labor-management dispute  
between the Chicago and  
North Western Transportation  
Company and the United  
Transportation Union. (Sept. 9,  
1988; 102 Stat. 1617; 2  
pages) Price: \$1.00

**LIST OF PUBLIC LAWS****Last List September 13, 1988**

This is a continuing list of  
public bills from the current  
session of Congress which  
have become Federal laws. It  
may be used in conjunction  
with "P.L.U.S." (Public Laws  
Update Service) on 523-6641.  
The text of laws is not  
published in the **Federal  
Register** but may be ordered  
in individual pamphlet form  
(referred to as "slip laws")  
from the Superintendent of  
Documents, U.S. Government  
Printing Office, Washington,  
DC 20402 (phone 202-275-  
3030).

**H.R. 1841/Pub. L. 100-424**

Commercial Fishing Industry  
Vessel Safety Act of 1988.  
(Sept. 9, 1988; 102 Stat.  
1585; 9 pages) Price: \$1.00

**H.R. 4143/Pub. L. 100-425**

To establish a reservation for  
the Confederated Tribes of  
the Grand Ronde Community  
of Oregon, and for other  
purposes. (Sept. 9, 1988; 102  
Stat. 1594; 4 pages) Price:  
\$1.00

**H.R. 4318/Pub. L. 100-426**

General Accounting Office  
Personnel Amendments Act of  
1988. (Sept. 9, 1988; 102  
Stat. 1598; 5 pages) Price:  
\$1.00

**H.R. 5174/Pub. L. 100-427**

To make clarifying, corrective,  
and conforming amendments  
to laws relating to Indian  
education, and for other  
purposes. (Sept. 9, 1988; 102  
Stat. 1603; 12 pages) Price:  
\$1.00



## Order Now!

# The United States Government Manual 1988/89

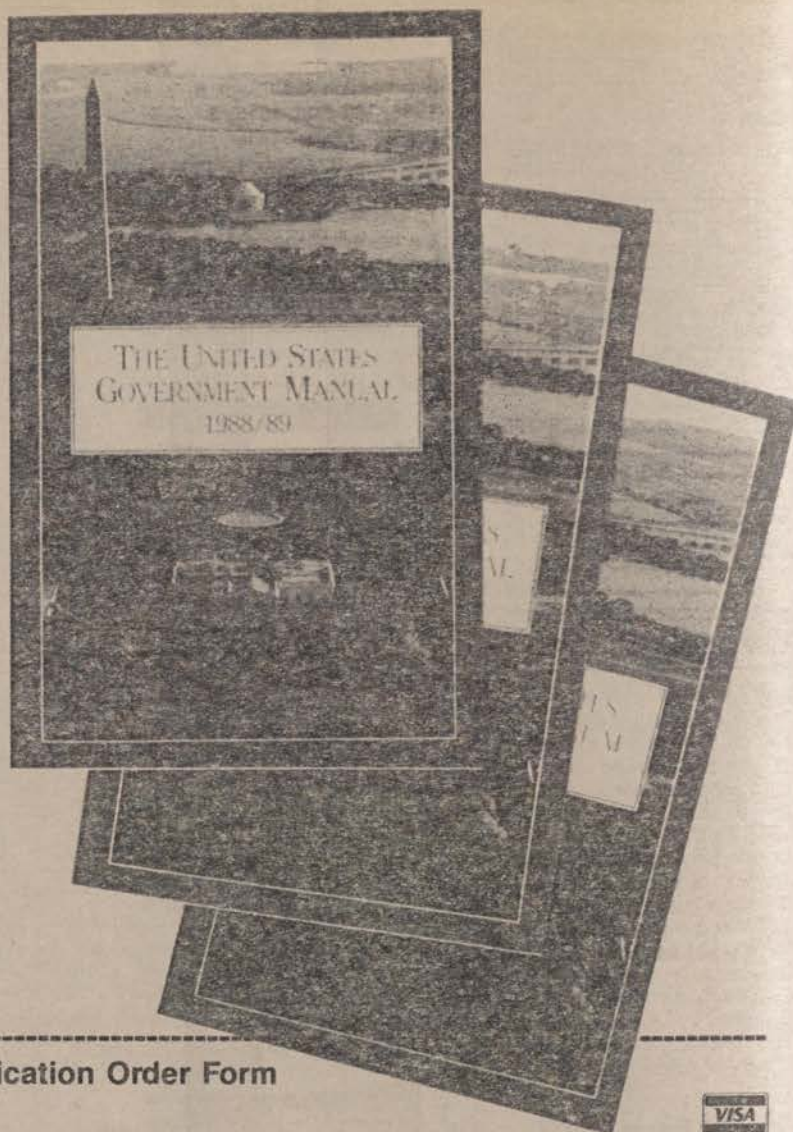
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

**\$20.00 per copy**



### Publication Order Form

Order processing code: \*6450

☐ **YES,** please send me the following indicated publications:

copies of THE UNITED STATES GOVERNMENT MANUAL, 1988/89 at \$20.00 per copy. S/N 069-000-00015-1.

1. The total cost of my order is \$\_\_\_\_\_ International customers please add 25%. All prices include regular domestic postage and handling and are good through 3/89. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. \_\_\_\_\_  
(Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents[illegible]☐ VISA, or MasterCard Account[illegible]

(Credit card expiration date) *Thank you for your order!*

(Signature) (Rev. 8-88)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325

(Rev. 8-54)



